500-09-001296-912
500-09-001297-910

Cour d'Appel

Montréal

En appel de deux jugements rendus le 26 juillet 1991, par l'honorable juge Jean-Jude Chabot, de la Cour supérieure, district de Montréal.

Nos: 500-09-001296-912 C.a.M. - 500-05-009755-883 C.s.M.

LE PROCUREUR GÉNÉRAL DU CANADA
APPELANT-Intimé

c.

RJR-MacDONALD INC.
INTIMÉE-Requérante

-et-

LE PROCUREUR GÉNÉRAL DU QUÉBEC
MIS EN CAUSE-Mis en cause

Nos: 500-05-001297-910 C.a.M. - 500-05-009760-883 C.s.M.

LE PROCUREUR GÉNÉRAL DU CANADA
APPELANT-Intimé

c.

IMPERIAL TOBACCO LTD
INTIMÉE-Requérante

-et-

LE PROCUREUR GÉNÉRAL DU QUÉBEC
MIS EN CAUSE-Mis en cause

D O S S I E R C O N J O I N T

Volume XLVIII: pages 9289 à 9431
(Dépositions)

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C A N A D A
PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

COUR SUPÉRIEURE

SOUS LA PRÉSIDENCE DE L'HONORABLE JUGE JEAN-JUDE CHABOT, J.C.S.

No: 500-05-009755-883

RJR-MACDONALD INC.
Requérante

c.

LE PROCUREUR GÉNÉRAL DU CANADA
Intimé

No: 500-05-009760-883

IMPERIAL TOBACCO LIMITÉE
Requérante

c.

LE PROCUREUR GÉNÉRAL DU CANADA
Intimé

10 avril 1990 - Vol. 58

C O M P A R U T I O N S :

Pour la requérante
RJR-MACDONALD INC.

Me COLIN K. IRVING,
Me GEORGES R. THIBAUDEAU,
EARL A. CHERNIAK, Q.C.,
Me MICHEL A. PINSONNAULT,
Avocats

MACKENZIE GERVAIS
Procureurs

Pour la requérante
IMPERIAL TOBACCO LIMITÉE

Me SIMON V. POTTER,
Me PIERRE BIENVENU,
LYNDON A.J. BARNES, ESQ.,
Me GREGORY BORDAN
Avocats

OGILVY, RENAULT
Procureurs

Pour l'intimé
LE PROCUREUR GÉNÉRAL DU CANADA

Me ROGER E. BAKER, Q.C.,
Me CLAUDE JOYAL,
PAUL EVRAIRE, ESQ.,
Avocats

CÔTÉ & OUELLET
Procureurs

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MICHAEL JOSEPH CHANDLER
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In the year of Our Lord, nineteen hundred and ninety (1990), on this tenth (10th) day of the month of April, PERSONALLY CAME AND APPEARED:

Me GEORGES R. THIBAUDEAU
on behalf of Petitioner, RJR-Macdonald Inc.
Pour la requérante RJR, Colin Irving, Georges Thibaudeau.
Me SIMON V. POTTER
on behalf of Petitioner, Imperial Tobacco Limitée
Et pour Imperial, Simon Potter, Lyndon Barnes.
Me ROGER E. BAKER, Q.C.
on behalf of Respondent
For the Attorney General, Roger Baker, Claude Joyal, Paul Evraire, Lise Tremblay.
Dr. Chandler.

Me IRVING:

My Lord, before we begin with Dr. Chandler, I wonder if I might make a brief application to the Court. As you will recall, My Lord, on the twenty-eighth (28th) of March...

THE COURT:

I do recall.

Me IRVING:

Dr. Harris was finishing...

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Me BAKER:

This is a man with a memory, Mr. Irving. Be careful!

Me IRVING:

I asked that we should be provided with the data which were shown in graphic form by Dr. Harris in what I think is AG-198. In any event, you will recall the graphs which were filed which showed consumption data in all of the countries used in the TSB annex for the years nineteen sixty (1960) to nineteen eighty-six (1986).

I put that first in the form of an objection and then repeated it in the form of an application. I don't have those data and I would renew now the application that they should be provided to us forthwith.

THE COURT:

I take it...

Me IRVING:

You may also recall, My Lord, that Dr. Harris had them with him. He actually read to the Court the consumption figures for Norway, year by year by year, from the notes he had in front of him at the time. That is the data that I would like to have and I see no reason why we ought not to be provided with it immediately.

THE COURT:

I thought we had settled that.

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Me BAKER:

Well, we had -- we had discussed it last week, My Lord. And I told Mr. Irving at the time and I repeated it to him in the Courtroom this morning that I was -- I'm prepared myself to have a look at the transcript this evening and communicate with Dr. Harris. What I gave him initially was clearly, or certainly not from my perspective in any event, an attempt to deceive. He asked for the data on which the second regression was based. We went back to my office at the end of the Court session that day and Dr. Harris banged it out of his computer so the computer didn't make a mistake and erase it. It was dated, signed and initialled by him and that's what I gave Mr. Irving.

It would appear that I might have to probe further into the data. I told him this morning downstairs that I was prepared to do that. We're eight (8) weeks away from the cross-examination of Dr. Harris. This is not an attempt on my part to stonewall. So, I think the matter should be cleared up in a matter of days.

THE COURT:

We'll suspend your application. There's no -- but could you just check the transcript to make sure that what he wants is really what I think he asked for.

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Me BAKER:

I will try -- I will try ever so hard to walk the very fine line between what he wants and what he gets, so I don't get into trouble with you, My Lord, I can assure you.

Me IRVING:

Well, just in case there is any doubt in the transcript, My Lord, I've made it perfectly clear again this morning. I think it's clear in the transcript.

THE COURT:

No, I...

Me IRVING:

I made it perfectly clear what it is I want. Mr. Baker can be in no doubt of that. I see no reason why they should be delayed.

THE COURT:

Okay. Proceed with...

Me BAKER:

Could we proceed? Dr. Chandler?

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In the year of Our Lord, nineteen hundred and ninety (1990), on this tenth (10th) day of the month of April, PERSONALLY CAME AND APPEARED:

MICHAEL JOSEPH CHANDLER, being fifty-one (51) years of age, residing [DELETED]

WHO, after having been duly sworn on the Holy Bible, doth depose and say as follows:

THE COURT:

Of course, I have read both the c.v. and the report.

Me BAKER:

I understand.

EXAMINATION BY Me ROGER E. BAKER, Q.C.
on behalf of Respondent

Q- Dr. Chandler, do you have your c.v. open in front of you?

A- Yes, I do.

Q- I am looking at page one (1) of it and I'm looking at the bottom under: "Education (c) University of California, Berkeley, 1966, Ph.D."

Could you tell the Court briefly what the subject

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of your doctoral thesis was?

A- My studies at Berkeley were in Child Clinical Psychology.

THE COURT:

Would you mind, speak a little louder, please.

A- Yes, My Lord. The -- my studies at the University of California, Berkeley were in Child Clinical Psychology and my thesis, which was titled: "A Process Analysis of Clinical Inference," concerned the manner in which expert clinicians make judgments, clinical or diagnostic judgments, and about their ability to understand the basis upon which they made these decisions.

Me BAKER:

Q- M'hm. Now, Doctor, after you took the Ph.D. at the University of California, I'm looking at -- still on page one (1) of the curriculum vitae, under: "Special Professional." I see "Institut des Sciences de l'Education, Université de Genève." I take it you went directly to Switzerland?

A- Yes, when I completed my Ph.D. I spent a post-doctoral year at the University of Geneva where I studied under Jean Piaget.

Q- Very briefly, who is Jean Piaget?

A- Piaget is probably this century's most important child developmental psychologist, a person whose work really

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forms the basis for much of the contemporary theory in research in the area of child developmental psychology.

Q- Did you work directly under Piaget, how did that operate when you spent the year in Geneva?

A- I took seminars which Piaget led and listened to or sat in upon weekly research meetings. I also participated in a variety of research projects while I was there but, frankly, no one works directly with Piaget, standing in his shadow is about as close as you can come.

Q- All right. I'm still looking at Section B, page one (1) of the c.v., Doctor, and I see that you were a post-doctorate fellow in Child Psychology at the Menninger Foundation. Now, what exactly is the Menninger Foundation?

A- Well, the Menninger Foundation is a psychoanalytic institute and in addition to being a treatment facility, it's a training facility also for psychiatrists, psychologists and other allied professionals who study either adult or childhood psychopathology. In my own case, I was a fellow in child psychopathology.

Q- And you spent two (2) years there?

A- Yes, that's correct.

Q- How was your time divided when you were in the Menninger Foundation?

A- I sat in upon a -- a lecture series and course series

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that's provided for psychiatric and psychological fellows. I also saw patients, child patients, both diagnostically and therapeutically under supervision.

Q- M'hm. I'd like to turn, if I may, to your teaching experience, Dr. Chandler, which is highlighted or highlit, we're at page two (2) of the curriculum vitae, and I see that you started at the University of Rochester in nineteen sixty-nine (1969)?

A- Yes, that's correct.

Q- Could you tell the Court what was the nature of your appointment at that university?

A- My primary appointment at the University of Rochester was in the department of psychology, although I had collateral or adjunct appointments in both the department of pediatrics and the department of child psychiatry.

Q- What were the nature of the courses that you taught over the years at the University of Rochester?

A- Well, I taught a great number of different courses. Principally, I taught courses about the course of human development and, particularly, the course of child development. I taught courses both to undergraduate students, courses in cognitive development, social development, emotional development.

Q- What -- when you say you taught courses in cognitive

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development and social development, what does -- what do you mean?

A- Well, I mean that the course, by means of which young persons come to assume a mature way of thinking, this whole process of thought and the formation of belief is the subject of the topic of cognitive development. Social development concerns the broad process by means of which children come to understand the rules, roles, mores, conventions of their society.

Q- Did you do clinical work when you were at the University of Rochester?

A- I did. I spent at least a half day a week as a consultant to a community clinic for children.

Q- M'hm. And then you moved from the University of Rochester to the University of British Columbia?

A- Yes.

Q- I can't find quite when?

A- It was in nineteen seventy-seven (1977).

Q- I see. Could you tell the Court what the nature of the courses were that you taught at that university, where you are still presently employed?

A- Yes. Again, very much as I've described, my teaching at the University of Rochester, I teach both undergraduate and graduate courses concerned with a variety of aspects of children's development. Again, I offer undergraduate

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courses on the broad topic of child development and I offer graduate courses, again, on a variety of topics, particularly, I offer courses on what's referred to as social cognitive development.

Q- What do you mean by that?

A- Well, while it's...

Q- At least the same kinds of courses you were teaching at the University of Rochester, more or less?

A- Yes, more or less.

Q- All right.

A- Just to clarify: social cognition, which is simply a combination of those two (2) separate words, is meant to reflect the fact that when children and young persons come to cognitively understand or grasp their world, part of the -- some of the matters that they must come to understand are those things having to do with other people and social groups. So social cognition is really the interface, if you will, between the study of cognitive development and the study of social development.

Q- Do you supervise Ph.D. students at the University of British Columbia, Doctor?

A- Yes, at the moment, I'm supervising three (3) Ph.D. students.

Q- All right. Now, I notice at page three (3) of your

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curriculum vitae under G, nineteen eighty-one (1981), nineteen eighty-two (1982), the University of Amsterdam. What was the nature of your appointment at that university and what were you doing there?

A- Well, I was brought or asked to come to the University of Amsterdam for a year where I functioned as the head of the program there on child developmental psychology.

Q- I see further down, again on page three (3), under professional activities (b), UBC Izaak Walton Killam Memorial senior fellow. What was that about, Doctor?

A- Last year was a sabbatical or study leave year for me and one may apply for and sometimes receive an Izaak Walton Killam Fellowship to aid one's travel and study during that period.

Q- And did you travel?

A- I did. I spent most of the fall of nineteen eighty-nine (1989), again at the University of Geneva and in the balance of that year, I traveled professionally to several Europeans countries including Finland, East Germany, England, Holland and Greece, where I collaborated with or interacted with colleagues or gave addresses at these university settings.

Q- I'd like to turn to your publications, Doctor -- and we'll begin at page five (5), My Lord. I see almost halfway down the page Chandler, M.J., nineteen

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seventy-three (1973), Egocentrism and Antisocial Behaviour, The Assessment and Training of Social Perspective Taking Skills. Could you briefly tell the Court what this study was about?

A- Well, the -- the term egocentrism refers to the -- the fact that young children are limited in their ability to recognize the fact that other persons hold the points of view or perspectives different from their own. So there is an extremely large body of literature that tries to track or document the slow process, slow progress that children make in moving from a position where they're essentially ignorant of the existence of points of view other than their own, until they have some better and more mature ability to see things from other people's perspectives.

Q- Was this article reprinted, Doctor?

A- Yes, as I have listed here in my c.v., as far as I know, only three (3) edited books that compile articles from the professional journals. These edited books are essentially composed for the benefit of students and essentially sandwich together a variety of articles that the editors feel would be helpful to students in the field.

Q- If you turn to page six (6), please. The top item, Chandler, M.J., nineteen seventy-five (1975), Relativism

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and the Problem of Epistemological Loneliness, The Development of Dialectical Operations. Could you tell the Court briefly what that was about?

A- Yes. Perhaps, just to clarify the word, epistemology generally refers to the science of knowledge acquisition, that is accounts of how persons come to acquire knowledge. The thrust of this article, and there are other articles later in the c.v. that touch on the same topic, concerns the fact that through most of their childhood years young persons are essentially ignorant of the fact that different persons in the world find different meaning in the same facts. As they come to recognize that this is so, as they come to recognize that knowledge has an interpretive quality or that we all construct or construe our own knowledge, then this poses a serious problem for adolescents. That is, they must come to terms with the fact that an earlier sense of absolute certainty really evaporates for them and they find themselves confronted by the fact that everyone sees things from a slightly different perspective.

Q- Further down on the page, the third from the bottom, Chandler, Paget and Koch, The Child Demystification of Psychological Defense Mechanisms, A Structural and Developmental Analysis. Very briefly, what does that

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article deal with, Doctor?

A- Well, the -- the article concerns the fact that children are confronted in a variety of different settings with the fact that others, including adults, sometimes misrepresent the world.

Q- M'hm.

A- In -- with reference to this particular topic, it concerns the way in which young children respond to what are roughly called psychological defenses. When adults deny or engage in various acts of projection. Children are often the witnesses to this and the study concerns how they come gradually to understand that people do not always mean exactly what they say.

Q- Turning to page seven (7), I believe the sixth one down, Chandler, Siegal and Boyes, The Development of Moral Behaviour, Continuities and Discontinuities. The International Journal of Behavioral Development. This was a review of the literature?

A- This -- well, it did review the literature on children's moral development. It also presented new empirical data on the way in which young persons come to try to integrate the variety of issues that are relevant in the making of morally relevant decisions.

Q- M'hm. Just below that: "Chandler 1982, Social Cognition and Social Structures, Adapting to a Social World More

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Complicated Than Oneself."

A- This is a straight review of the literature, but it concerns the fact that because it's broadly understood in my field that young persons have important cognitive limitations, the question becomes how do they deal with a social environment, which has really been structured for adults and is consequently more complicated than they are.

Q- M'hm. Two (2) below the one to which you've just referred, again at page seven (7): "Chandler and Boyes: Social Cognitive Development, Handbook of Developmental Psychology," Prentiss Hall.

I take it this is not a textbook that you wrote?

A- No, this is an edited volume by Benjamin Wolman and it's essentially a kind of desk reference, if you will, or a handbook for persons in the field, and it attempts to provide a state of the art review of a variety of topics. In my own case, the topic that I referenced a moment ago, that of social cognition.

Q- M'hm. Is this text still widely distributed, Doctor?

A- Yes, I believe that it is.

Q- M'hm. If we could turn to page eight (8), please. The third item down: "Chandler, Boyes, Ball and Hala: The Conservation of Self, Children's Changing Conceptions of Self-Continuity."

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Briefly, if you would, could you tell the Court what that was about?

A- Yes. This is one of the articles I've written on the general topic of the identity problems that adolescents are known to be forced to deal with. And, in this particular case, the article concerns the fact that in understanding one's own self, one must appreciate that one persists through time. And so the article essentially reports upon research into how it is that children of various ages understand this issue.

Q- Now, Doctor, at the bottom of page eight (8), I see completed and unpublished material, and that runs for several pages through page twelve (12). Are these lectures which you have given around the world over the years since nineteen sixty-seven (1967)?

A- Yes, they -- sometimes these are invited addresses from particular universities, sometimes they are invited presentations to professional meetings, sometimes they are papers that are delivered because they've been competitively reviewed or peer reviewed and some committee has selected this among many other papers to be presented at a conference.

Q- M'hm. I see at page twelve (12), if we just look at the most recent years, the fourth item down: "Chandler and Ball in Tokyo." Did you deliver a paper there with L.

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Ball or did Ball deliver the paper and you contributed to the writing of it? How does that work?

A- In this case, Lorraine Ball, who is a graduate student who's worked with me for several years, was the co-author of the paper. Unfortunately, funds were available to take me to Tokyo, but not my assistant. So.

Q- That's not very nice.

A- It isn't very nice, but it's realistic.

Q- Is this document complete, this issue of where you've lectured around the world, or have you missed some?

A- People in my profession are sort of obliged to update their c.v.s at intervals. This one, which I think I sent eight (8) or nine (9) months ago, leaves out some of the places that I've spoken at, particularly because I was on sabbatical last year and spoke in a variety of universities. I could have...

Q- Which universities did you speak at last year, Doctor?

A- The -- a university in Finland, which is unpronounceable, Oxford University, the University of Surrey, the University of Athens, the University of Amsterdam. I think that's all.

Q- Now, Doctor, to a layman, it's very easy to get confused by all the branches of psychology. So could you begin by telling the Court what a developmental psychologist

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really means?

A- Well, the field of psychology is divided by convention in various ways in different places. Developmental psychology or developmental psychologists are concerned with the -- those psychological processes that change importantly across the course of human development. The bulk of this work tends to be with the study of children and adolescents. There is also interest and concern, although to a lesser degree, with other age-related change processes in adulthood and particularly among senior citizens or aging persons.

So all the persons who, as I do, work in this field have the task of understanding a variety of topical areas within psychology as they apply to children and others in the course of their development. So the focus is on issues of cognitive development, socialization, emotional development. Each of those topics that I mentioned: cognition, for example, it's often the case that there are persons who describe themselves as cognitive psychologists or there are persons who characterize themselves as social psychologists. And it's typically the case that persons who describe themselves in these ways study these processes in adults and largely advocate the study of these processes in children to people who are in child development.

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Q- Doctor, have you written any papers or done any research in respect of children and cigarette advertising?

A- No, I have not.

Q- M'hm. Is there any particular reason why? Is there an ethical problem, for example, in doing that kind of research in your view?

A- Well, it's generally the case that people who pride themselves in doing "basic research" undertake to do that research in domains where they're free to carry out experiments. There are a number of areas, and the issue of children and smoking is one of these, in which there are important ethical considerations that interfere with or block or make it impossible to carry out classical experimental designs. If one wished to understand smoking behaviour in young persons and to experiment directly with this, you would need to be able to do things like shield certain children completely from exposure to cigarettes or smoking or cigarette advertising and you would need to experimentally inundate another group with smoking or exposure to advertising, and for, in my judgment, very good reasons, this is something that is neither permitted nor would, I think, be undertaken.

So the consequence of that is that this area, although extremely important in a human sense, is an

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extremely difficult area in which to conduct experimental research. So this is, at least, part of my own reason for not having a history of experimentation in this field.

Q- Doctor, have you ever joined or been a member of a non-smoking advocacy group?

A- No, I have not.

Q- Doctor Chandler, do you presently smoke?

A- I've been a heavy smoker for thirty-five (35) years.

Q- My Lord, I have no further questions. I would offer Doctor Michael Chandler as an expert witness.

THE COURT:

Do you want -- do you want to give his c.v. a number?

Me BAKER:

Yes, I was about to do that.

BY THE CLERK:

AG-233.

THE COURT:

Deux cent, excusez?

BY THE CLERK:

Trente-trois (33).

Me POTTER:

I don't believe we have any questions, My Lord.

THE COURT:

Okay, Dr. Chandler, you are qualified as an expert in

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your field of expertise. It says you worked with Piaget, you must understand some French?

A- My passive French is much better than my active French, My Lord.

Q- Wasn't it Picasso that said "On met longtemps à devenir jeune"?

A- Yes, I think it was.

EXAMINATION BY Me ROGER E. BAKER, Q.C.

On behalf of Respondent:

Q- Dr. Chandler, je vous réfère à la page -- do you have your report in front of you, Doctor?

A- Yes, I do.

Q- Dr. Chandler, in the first two (2) pages of your report, pages three (3) and four (4), you speak of the under-recognized vulnerabilities of youth. Could you please explain to the Court what you mean by vulnerabilities and in what sense they can be described as under-recognized?

A- Well, it's, I think, the broad contention and supported view of developmental psychologists such as myself, that children and youth are qualitatively different from older persons and it's, of course, entirely natural that this is the case and so there's nothing untoward about this being so. But their limited intellectual or

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cognitive abilities and their undeveloped social competencies are limitations when viewed with reference to the competencies of adults. So, as I use here the word vulnerability, I mean to draw attention to the fact that these cognitive and social, emotional immaturities make such young persons vulnerable to a world, again, more complicated than themselves.

Q- Why do you say that it's under-recognized?

A- Well, if, as I assert to be the case, children are qualitatively different from adults, then it's possible to misunderstand that fact in both directions. We could, sometimes, imagine that children are less competent than in fact they really are. But I think the more common error is to -- is to suppose that young persons are more able than would be demonstrated objectively.

Q- Is that a very common error?

A- I'm sorry?

Q- Is that a very common error?

A- Well, I think it's a predilection, if you will, for we, as adults, to -- to misunderstand and presuppose that children achieve our levels of understanding more quickly than they in fact do. So, I think yes, it's very common.

Q- I see. Now, Doctor, at pages four (4) and five (5) of

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your report, you comment upon different age groups and different topical issues. Have you found a convenient way to organize your testimony for this morning? I see there's a chart behind you?

A- Well, I did make what is simply a two by two (2 x 2) table to put on the board here. I mean to reflect, in general, the organization of the report that I've written because, as I've tried to indicate, children -- it's not only the case that children are different from adults but they're, of course, also different from one another, and so any discussion of this topic demands, in some way, that I talk about young persons of different ages. Here I mean, at least, as a guide to any comments that I might make to make the conventional distinction first between children and adolescents. There are certainly no magic thresholds here when I speak of children; I roughly mean, as I think most persons do, children under twelve (12) years of age. When I speak of adolescents, although again age is no perfect marker, I mean to talk about young persons who are high school age, teenagers, pubescent or, in some way, roughly between twelve (12) and eighteen (18) years of age.

Q- If I could stop you for just a moment. My Lord, can you see the chart?

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THE COURT:

Yes, I think so.

Me BAKER:

I'm sorry to be asking you questions but I remember at an earlier time you suggested that you were having some difficulty.

THE COURT:

Yes, I am "myope." I can't see far.

Me POTTER:

Nearsighted.

Me BAKER:

Farsighted. Farsighted. When you can't see far, it's farsighted. Have I got it wrong?

THE COURT:

Well, whatever. I can see zero (0), twelve (12), twelve (12), eighteen (18), child...

Me BAKER:

All right, could you...

THE COURT:

... adolescent, zero (0), seven (7), eight (8), twelve (12), cognitive, social and emotional.

Me BAKER:

You can see it perfectly.

THE COURT:

Okay. Good. It's not clear but I can see it. But I

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figure it from the report also. You should just bring it a little closer.

Me BAKER:

Yes.

THE COURT:

It would be perfect. That's great.

Me BAKER:

Q- Now, just so you know, Doctor, you now no longer have an escape route through the left side of the witness box.

A- Yes. I always escape to the right.

THE COURT:

It's better right than down below.

A- Yes.

Me BAKER:

Q- I'd like to address your attention, Doctor, to cognitive limitations of children. We're referring, My Lord, to pages five (5) and six (6) and nine (9) through eleven (11) of the report you have in front of you. Doctor, would you describe some of the intellectual limitations of young persons in this age group?

A- Perhaps it's -- it's useful for me to point out that I've put cognitive in the kind of upper row of this table and it's always something of an arbitrary convention to try to discuss children's cognitive development apart from anything else. So this is,

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although I follow, I think, a common convention here, it's simply a heuristic each time the children behave in the world, they bring to bear not only their cognitive abilities but also their levels of social, emotional maturity or competence. So, I just mean to stress for you that while I think it's coherent to talk separately of children's cognitive development, that one must keep in mind that, I think it's obvious, that this is a bit of an analytic artifact to talk of cognition separately from these other issues. But still, the research literature is often organized in this fashion and so it's that really that I propose to do. So, I say that only because your question directs me to talk about cognitive development and I -- I just want to add this proviso that one can only do this recognizing that these other factors are always at work.

Q- Now, if you would direct your attention first, Doctor Chandler, to the younger age group in the upper left zone on the chart, that is zero (0) to seven (7).

A- I mean here because so much is happening in the cognitive lives of children, there, again, are conventions to try to break up this broad period from zero (0) to twelve (12), there's much written about infants but I take it that this is remote from the interests of this Court at the moment. So, I would,

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unless asked to do otherwise, would propose not to talk about infant children and to really focus on children big enough to walk and talk. Children roughly two (2) years of age, until they're approximately seven (7) or so, very early school age, and to distinguish them from people, other young people, who are thought of as in middle childhood or in middle school years.

So, if I speak then directly to your question about the cognitive abilities of these younger children, children roughly two (2) to seven (7), then there is, of course, an enormous amount written about this, but to put a quick summary upon that, I think it's fair to say that children in this age period are -- are limited or vulnerable in the sense that their cognitions are very concrete, and I go on in my report and would be happy to -- here to -- to talk in more detail about the fact that their cognitions are not simply concrete but what is referred to in my literature as centered -- by which one means focused or riveted -- on only a single element in a complicated problem.

So the thinking is generally concrete, centered and egocentric, I would offer, as a rough summary of the cognitive development of this.

Q- Could you give the Court an example of what you mean by centered or egocentric reasoning or thinking of children

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in that younger age group, Doctor Chandler?

A- Well, with reference to the first item in your question, the notion of centered, where here the obverse term is "decentered" or...

One convenient example is the way in which young persons in this age group think about morally relevant matters. Perhaps morally relevant is a big word for a five (5) or six (6) year old, but children in this age group are obliged to deal with matters of fairness, whether they think punishments are appropriate, whether they think they've been too harshly or -- punished.

So children in this age group are concerned with matters that adults would refer to as morally relevant and morally hazardous. And as is the case with adults, when we look at such matters of moral relevance, a sort of minimally complex way of doing so is to wonder what the consequences of a person's actions were, how badly things came out, and also what that person's intentions were. Did they mean to do this or was it perhaps by accident.

So you can look at such problems of fairness from a child's point of view and look at the fact that in order to arrive at anything like a mature judgment, they must in some way balance the issues of intention or intentionality and the issues of outcome or

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consequentiality.

So this is a two (2) variable problem. That is to decide whether something -- someone should be punished or not. At least children would, or adolescents or older persons would consider two (2) things: did the person mean to do it, did they intend to do it, and what was the consequence?

The research literature on this subject makes it very clear that because young children in this age group, under seven (7), are centered in their thinking and look at only one issue of a complicated problem at a time, they either make their judgments on the basis of how bad the consequences were or, alternatively, what the person's intentions were. But they can't pull these two (2) variables together and say something like: well, the consequences were bad, he didn't really mean to do so.

Q- Doctor, could you give the Court an example of what you're saying from the literature?

A- Well, there's a procedure that was, actually originally introduced by Piaget, but has gone on to be investigated in very similar ways by literally hundreds of psychologists. You essentially present to a child two (2) cases. One case is a child who, acting out of good intentions, trying to help his mother, managed to break

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fifteen (15) cups, which is a consequence of fifteen (15) cups. This child is compared to another who, while acting out of bad intentions, broke only one (1) cup. And the child is given this Solomonlike task of deciding which of these two (2) children was the naughtiest and deserves the most punishment, et cetera.

And it's the standard finding that children in the age group under consideration, children under seven (7), centre their attention on one of these dimensions of this two (2) variable problem or the other and make all of their judgments on the basis of either that fifteen (15) cups is fifteen (15) times as bad as one (1) cup and make their judgment on the basis of consequences or, alternatively, on the basis of whether the person intended or didn't intend to act in this way.

Q- Now, Doctor, I take it...

THE COURT:

It's probably because I didn't understand the test, but if you ask them to choose, the results will be they will choose either one or the other, so you don't prove much.

A- Well, like, it's true that children will choose to make their judgments either on the basis of the person's intentions or on the basis of the consequences. But what they are unable to do is simultaneously consider that the consequences need to be taken into

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consideration in light of the intentions. So certainly older children will see that good intentions are a mitigating factor in examining the consequences of someone's behaviour.

So while it's true that you can -- as a function of the way you present the problem, you can make every child make their judgments on the basis of intention or essentially every child make their judgments only on the basis of how many cups are broken, but what you can't make a five (5), six (6) or seven (7) year old child do is understand that both of these things need to be taken into consideration at the same time.

And it's in that sense that their thinking is centered on one dimension rather than another.

There's, perhaps a -- if it would be helpful, a second kind of example that I could give. It's a very classic one.

If you present a child with two (2) water beakers, identical in size and filled to the same level with water, and once the child agrees with you that they look the same to him, you can then pour the contents of one into a tall thin container. Now, the water level will rise higher because the container has a smaller diameter and so the column of water is both taller but narrower. Now this, again, like the issue of intentions and

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consequences, is a problem that has two (2) variables that need to be taken into consideration at once.

What children in this age group can't do is understand that it's the same amount of water, even though the column is taller, because it's also narrower. So if you pour the water into the tall thin container, they will either claim that there's more water because it's taller or there's less water because it's narrower. But what they can't do is integrate these two (2) things and say: while it's taller, it's also narrower, so it's the same.

Me BAKER:

Q- I take it, Doctor, that those were examples of what you meant by children's, young children's, thinking being centered...

A- Yes, that's correct.

Q- ...or egocentric. Now -- or centered, excuse me.

Could you give the Court an example of what you mean by their thinking in respect of it being egocentric?

A- Well, as I indicated earlier, the term egocentrism is used in the literature to refer to the fact that before a certain age children are largely ignorant of the fact that other people see the world differently or have a different perspective or different point of view.

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And there's a large literature on how this inability changes during the course of child development. Children in the age group that we're discussing are largely characterized by the fact that they assume that their point of view is the same as everybody else's, or that, perhaps more clearly, that everyone shares their own point of view.

So there are a great number of studies and many of my own studies concern this -- this subject. That -- studies which attempt to understand the developmental course by means of which children move from being egocentric to a position of being increasingly less egocentric. There's no perfect word for the other end of this scale, it's either sociocentric or prospectival or -- but at least the inability of young children to do this is quite classic in the literature.

Q- Could you give the Court an example from the literature of what you're talking about?

A- Well, perhaps I could if I could use this...

Q- That's the wrong one. Bearing in mind that the Court opened today's session by making reference to Picasso, Dr. Chandler, so be careful.

A- Okay. Imagine that you show a child a picture of -- I'm not very good at -- two (2) elephants smelling a grapefruit or looking at a ball. And you asked a

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child...

THE COURT:

The effort that I'm making to picture two (2) elephants, is that cognitive?

A- Yes. Imagine this is an overhead view.

Q- I'm just kidding.

A- That way I don't have to do legs. That's...

But if you show this picture to a child and say: what is this? They will say something like: two (2) elephants and a ball. Anything will do that's reasonable. Then you take a second piece of paper which has a hole cut in it and you lay it over the top of this picture so that only this shows through. So what the child sees or what's left sticking through this little window is something that looks like this.

Now, you invite the child to tell you what someone else who sees only this will think that is. So they know it's two (2) elephants and a baseball. They're asked to take the point of view or perspective of someone who sees this delimited window and children in the age group under consideration all say: oh, he would think it's two (2) elephants and a grapefruit. That is because their point of view upon this is informed more broadly, they can't put themselves in the perspective of someone who sees a narrower horizon upon the world than

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they themselves see.

Now, there are a great number of different ways to try to demonstrate this same fact, but they all come to the same point, which is that whenever a problem -- whenever the world presents itself in different perspectives or from different points of view to different people, young children in this age group are ignorant of that fact and egocentrically assume that other people see the world as they see it.

Me BAKER:

Q- Doctor, is there such a concept or is there a concept in your field known as whole/part relations?

A- Yes, the -- in trying to quickly characterize the thinking of these young preschool children, I've described them as concrete or centered or egocentric, but this is only the beginning of a much longer list of features or limitations of the thinking of children in this age group. So it's also commonly said of them that they are unable to deal with whole/part relations, that they think transductively, that they can't understand concepts of chance. The list is quite a long list. You asked particularly about the issue of whole/part relationships.

Q- Would you be good enough to give the Court an example of what you mean by that from the literature?

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THE COURT:

Is that pull or whole?

A- Whole, like a whole versus the parts.

Q- The parts.

A- Well, in general, it's the case that we, as adults, understand that whole objects, whole events can be decomposed or broken down into smaller parts and that sometimes these parts exist. An example might be that there is a superordinate category like animals, of which dogs and cats are part. If you present a child, for example, with a whole/part problem concerning geography, like at the moment we're in Montreal, in the Province of Quebec, in the country of Canada and in the North American continent, all at the same time; and you and I understand that Montreal is a part of Quebec and that it's possible to be in Montreal and in Quebec at the same time. But young children in this age group imagine that Montreal is like an island situated in the middle of Quebec or like a hole in a doughnut, and so if you ask them, people who have lived here all their lives, have they ever met anyone from Quebec, they're puzzled and think perhaps they've met someone from Quebec, but they're not sure. That is, they're limited because they fail to understand the hierarchical nature of the relationship between wholes and the parts that compose

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these wholes.

Q- Doctor, I understand that you heretofore have been talking about very young children up to the age of seven (7). I'd like you to move, if you might, to the group between seven (7) and twelve (12) and ask you the following question. Do children in that second age level of younger children, that is from seven (7) to twelve (12), have cognitive limitations that might make them persistently vulnerable -- and I'm referring, My Lord, for reference, to the report, approximately pages ten (10) and eleven (11)?

A- Well, it's important to recognize as a -- I think it's obvious that as children move from this early childhood period to sort of the middle childhood period, that the ways in which they think about the world or cognize the world comes closer to the cognitive forms present in the thinking of adults. But it's also important to appreciate that they're making steps toward a more mature cognitive approach to the world but haven't arrived there yet; and there are a variety of ways that one can try to characterize these persistent limitations.

It's -- it's important, I think, in general to appreciate that when we think about objects in the world, sometimes we think about a concrete object. That

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is, a child of four (4) or five (5) understands what it means for me to be thinking about the paper in front of me or, at least, a physical object in front of me.

By the time they're seven (7) or so, children can understand not only that people think about things but they can understand that people think about other people thinking. That is, a child of seven (7) can understand that their mother is thinking about them. But what they can't deal with appropriately are, if you will, third order kinds of abstractions. Like I, for example, Mr. Baker, am not only thinking about what you're thinking about, or trying to, but I'm also thinking about what you're thinking about what I'm thinking about. Maybe you're trying to -- and I must understand...

Q- It's simpler for me if I don't actually. I will just ask you the questions and listen.

A- Well...

Q- But I think I understand what you're saying.

A- It's certainly -- the language that's required to describe this becomes nested or hierarchical and so, therefore, it's difficult to talk about but it's a thing we do everyday. We, as adults, are concerned about thoughts that other people have about us in our thinking. Children in this age group are extremely limited in their ability to consider what other people

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are thinking about what they might be thinking about.

Q- Now, is that what you mean by higher order abstraction, Dr. Chandler?

A- Yes, it's -- it is.

Q- All right. Could you give...

THE COURT:

Oh, that's what he meant.

Me BAKER:

Just imagine all the new things we've learned in the last seven (7) months, My Lord.

Q- Now, Dr. Chandler, could you give the Court an example of what you mean by this from the literature?

A- Okay, it'll perhaps be simpler if I try to elaborate on two (2) examples that I've already given, this water jar problem for example. As I presented it with water being poured into a tall thin container, if the container is, as this one is, round, you really only need to concern yourself with two (2) factors. The height of the water jar or the container into which it's poured and the diameter or the width. So this is -- solving that problem requires you that you consider two (2) variables at once, and seven (7) year old children can do this. But once the problem gets more complicated, with three (3) dimensions, then they fail again. So, they can't -- they can't simultaneously consider a cube, its height,

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width and breadth all at the same time and so they fail to conserve -- conserve is a technical word meaning you understand that something like a volume can be changed in shape but it's still the same volume.

So, because you can invent not only two (2) variable problems, like the beaker of water, but three (3) dimensional -- three (3) variable problems, children in the -- in the roughly eight (8) to twelve (12) year old age period fail to solve such three (3) variable problems. I -- I used before these elephants and the grapefruit as a way of trying to characterize how children have difficulty keeping track of multiple points of view, or even recognizing the existence of multiple points of view, but this problem begins to go away at six (6) or seven (7) in the sense that young children, by this age, know that other people have different points of view. What they don't know is whenever there are, again, more than two (2) factors to be considered, they can't keep track of multiple points of view. I could give an example, you can show a child a picture of -- a picture, say, of three (3) people. Father walking to the door with a present behind his back, a child and a mother waiting in the door, and you can ask children to describe that picture as the child would describe it, as the mother would describe it, as

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the father would describe it. Now, before they're six (6) or seven (7), they can't do that, they think everyone would describe the picture exactly the same way. That's because they don't even appreciate the existence of other points of view.

By the time they're seven (7) or so, they appreciate that the father might say: I'm coming home bringing a present for my wife's anniversary. The child might say: Dad is bringing a present, maybe I did something good. The child could tell a different story from different perspectives, but what they can't do, in this age period, is -- is understand that it's important to appreciate that the mother -- that the mother might reason something as follows: I know it's my anniversary, the present is for me but my son will be upset. So each can tell the story from a unique point of view. It's not until children are twelve (12) or more that they can appreciate that one (1) person's point of view, one (1) person's story, would need to include the points of view of the other story characters. I mean, there are classic things in literature like a Kurosawa film, Rashomon is about seeing the world from the perspectives of different people, and integrating the Alexandria Quartet is another example.

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I only mean, in saying that, to point out that as adults we find it useful and interesting to recognize that the same event is multiply understood from different perspectives. Seven (7) to twelve (12) or eight (8) to twelve (12) year old children lack in appreciation of that fact.

Q- M'hm. While we're on the subject of children under twelve (12), Doctor, can young people in that age group -- or are young people in that age group aware of the selling intent of advertisements?

A- Well, there is a research literature that looks at children's ability to recognize selling intent and attempts to do so by examining children of different ages. It's -- it's important here, I think, to appreciate what are some very important methodologic problems that one needs to keep in mind. If you simply give children a forced choice, is this an ad? Is it not an ad? Then, although the ages differ slightly from the one study to the next, children of very young school age, and clearly by the time they're seven (7) or eight (8), can tell you that this thing that you're showing me is or isn't an ad or to describe it -- to describe some stimulus as an ad. But it's important, I think, to appreciate that the problem is considerably more complicated than just knowing when you've been asked a

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point blank question or when you've been cued to be able to decide is this an ad, is it not an ad?

In the real world, children are bombarded by an ongoing stream of events. It's necessary, without anyone asking them or without anyone cuing them, to recognize first that the thing that they're witnessing may or may not be an ad and it's also important to recognize -- there's a confusion, in my judgment, in the literature, because sometimes people who write in this field describe knowing the fact that children are aware as if it were a cognitive defense. It is -- the simple matter of ad recognition is sometimes characterized as the child now has cognitive defenses to -- some wall that they can throw up against the influence simply because they know that this is or isn't an ad. But it's important, I think, to appreciate that in order to do anything about it, once you know that it's an ad, you must have some kind of way of defending.

Q- I have placed before you, Dr. Chandler, an article entitled "Children's Use of Cognitive Defenses Against Television Advertising, A Cognitive Response Approach" by Brucks, Armstrong and Goldberg.

Me IRVING:

Were is that in the report?

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Me BAKER:

It's not.

Me POTTER:

It's not in the report?

Me BAKER:

Q- And I...

Me IRVING:

Could we have just a moment, please, My Lord?

Me BAKER:

Q- Now, Dr. Chandler, I refer you to page four seven one (471) of what we'll call the Brucks article.

THE COURT:

This is not one of your articles, eh?

A- No, it's not an article that I've previously cited.

Me BAKER:

Q- What was this study about, Doctor?

A- Well...

Q- You might want to make reference to the abstract if that helps.

A- Okay. Mary Brucks and her colleagues were interested in just the question that I was trying to address a moment ago, that is whether or not simply recognizing that something is an ad constitutes a basis or grounds for being able to in some way defend oneself against its selling attempt.

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They do as you'll notice, this is an article first about children's responses to television and it is a -- concerns matters other than cigarette smoking for, I think, just the reason that I described earlier, you couldn't do such a study, I think, with exposing children intentionally to cigarette advertising.

But what Brucks and her colleagues do is take a group of, I believe, fourth (4th) graders and they divide that group in half and they give half of this group, they expose them to a training film about how to defend themselves against toy advertising. The film explains that sometimes the objects are made to seem larger than they are, they're -- seem to move on their own volition to create more excitement than perhaps might be objectively the case. So they show this film to some kids and not to others.

I think it's maybe, there's one place to sort of stare at in this paper while I try to briefly summarize it, it's the figure on page four seven eight (478), with this little graph that's presented there.

So some of the children then are exposed to such a training film. And then some short amount of time passes, I think it's a -- maybe it's a couple of weeks. And then the children are exposed to ads, but with half of them, just before they expose them to the ad, they

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give them -- they try to cue them to remind them of this training film by giving them a short quiz. What was this training film about? What did it say? Et cetera.

Now, if -- then they -- so they've got two (2) groups now, one who's seen the film, one who hasn't. And in another dimension they have kids who've been cued and kids who've not been cued. And then they simply show them advertising and interview them in the process of their actually watching this, they ask them questions. And what they're keeping track of in particular is the extent to which these young persons are able to mount any kind of counter argument against the ad. A counter argument would be something like: they make it look big, but it really isn't.

Q- If I look at the abstract at page four seven one (471).

A- Yes.

Q- In the middle, approximately the middle of the paragraph, the study found:

"That advertising knowledge did not result in increased counter arguments against advertisements unless a cue was present to activate that knowledge. Direct questions themselves appear to activate advertising knowledge, thus overestimating children's actual use of cognitive defenses."

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Are you satisfied that that which appears in the abstract is a fair reflection of what the body of the article found?

A- Yes, I am.

Q- My Lord, I would file this article: "Children's Use of Cognitive Defenses Against Television Advertising, A Cognitive Response Approach," by Brucks, Armstrong and Goldberg, as AG-234.

Me IRVING:

Well, My Lord...

Me BAKER:

And, My Lord, I...

Me IRVING:

Just a moment. I object, My Lord. We have been furnished with a report by this witness with a very long list of articles attached to it. He has told the Court that he has not done any research on his own into the effect of advertising. And now we are given, without prior notice, another article written by three (3) people who are not before the Court, not as, as I see it, as a -- simply part of the literature in which this witness' own research is supported or based, but simply to bring in the evidence of other individuals who are not before the Court.

So unless it's simply being filed as a background

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piece, I must object, because we're not able to cross-examine.

THE COURT:

Maître Baker?

Me BAKER:

As with any piece of evidence of this nature, My Lord, when a scientist is testifying, he is using it or going to use it as background for his own views and opinions that will be expressed in the course of the testimony today. And I think you've heard ample argument in the course of the last several months about the right of an expert witness to use texts or articles of others.

In connection with my friend's remarks that it is not indicated in Dr. Chandler's paper that this particular study was going to be used, we're all aware that these expert's reports were commissioned approximately a year ago, filed last August. Things change and times change in the course of the trial and it's not at all inappropriate, given the subject under review, for Dr. Chandler to make use of an article like this as illustrations of what the literature says on the various subjects.

So I would simply ask Your Lordship to dismiss the objection.

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THE COURT:

I will take it under reserve at this stage. What was the number given?

Me BAKER:

234. Might this be a convenient time to break for the morning, My Lord?

THE COURT:

As good as any. Fifteen (15) minutes.

SHORT RECESS

THE COURT:

I have another quote if you want one. It's in French, too. It's from Jean Cocteau, "Les enfants terribles," I believe it's called. "Même chose, "La Verité sort toujours de la bouche des enfants."

Me BAKER:

Q- Now, we missed an example from the literature, Doctor, earlier, dealing with children and truth and the validity of arguments. No, I think we'll let that one go, My Lord.

Now, you have been talking heretofore about cognitive limitations of young people up to the age of twelve (12). At page five (5) of your report, if you'd be good enough to turn to it, you'll see, about

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two-thirds of the way down the page, two point one (2.1), you used the expression "socio-emotional limitations."

What do you mean by that, Doctor, exactly?

A- Well, what I intend to refer to by that joined phrase is that young persons in this age group have much to learn about their social world and have an important task to learn to exercise important controls over their emotional or affective life. And so, as is commonly done, these issues are simply bracketed as a way of talking about the whole landscape of children's socialization.

Q- When you talk about the landscape of children's socialization, do you mean by that children growing up or learning how to grow up?

A- I think it's important to draw attention to the fact that the principal job description, if you will, of a young child is to learn how it is or what it means to become an adult.

So we certainly see this in very obvious ways with adolescents who are right on the cusp of becoming adult and who work enormously hard to posture as adults. But I mean to draw attention in this -- I meant to draw attention in this part of my report to the fact that this process, by means of which young persons work to

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become alert to what it means to be an adult, begins at an extremely early age.

Q- What is meant in your field, Doctor, by the expression "social scripting?"

A- Well, again, this is a piece of jargon, I suppose, that refers to the fact that young children are being especially attentive to the various activities of adults and so learn scripts, if you will, about how to behave as an adult would behave. So very young children, if you pose questions to them, like: what would you do if you went out to dinner? How would you arrange to behave in a restaurant? Even though, because of their cognitive limitations, they often make mistakes about this, they're practicing and learning how one behaves, asks for a menu, gets a little plate of food first.

So children, even of four (4) or five (5), have already come to some appreciation and are certainly active and attentive to these adult activities and are attempting to become competent in these adult areas.

Q- How do children deal with cultural stereotypes, if at all?

A- Well, there's an active literature that concerns how young children understand certain of the dimensions, stereotypic dimensions of adult life. A useful example is how such young children learn something about the

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role of being a male or female in their society. And so by the time children are of nursery school age, they have already accomplished an important understanding of the stereotypic view of being a male or a female. You can ask four (4) year old children, for example, what sort of present would be appropriate for a mother and they will mention stereotypic things like aprons and kitchen gadgets. If you asked them what would be an appropriate gift for a father, they'd mention things like tools or pipes. They do this, not simply by attending to what it is that their own mothers and fathers do, but by looking very broadly into the society. So children whose fathers do the cooking, also believe that aprons and kitchen gadgets are the appropriate gift for the mothers and not the fathers.

So I mean simply to draw attention to the fact that at an age that is perhaps much younger than some might suspect, that children, even preschool children, are actively scanning their environment for information about what it means to be a grown up and what it means to be a grown up man or woman.

Q- Now, you were just talking about children in the early part of their childhood, in the zero (0) to twelve (12) age group, but let's move into what I think you call middle childhood, which would be somewhere between what:

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seven (7) and twelve (12), Doctor?

A- Yes.

Q- For example, how do girls, young girls, deal with the issue of beauty products? And if you'd be good enough to give us an example from the literature.

A- Well, there is an interesting and I think important study by Gorn and Florsheim, this is a nineteen eighty-five (1985) article, as I recall.

Q- Well, I'll give it to you in just a moment, if I can find it. I beg your pardon Mr. Mitchell?

A- The...

Q- Hold on for just a moment, please, I want to place a copy in front of the Court. I'm sorry, you were saying?

A- I just -- I was reading the title, which is called "The Effects of Commercials for Adult Products on Children". I should draw your attention to the fact that as it's -- this issue is developed in the Gorn and Florsheim study, the commercials under consideration are television commercials.

Q- M'hm.

A- And the products are not smoking products. Again, in the latter case at least, this is the choices that were made about the kinds of commercials that these children were exposed to, reflects the -- the broad reluctance of research investigators to directly expose children to

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commercials that had to do with a variety of questionable adult products.

Q- I'm looking at page nine six five (965), under the heading "Results," and I see a statement:

> "The brand awareness results suggested that lipstick was a relevant product for 9 to 10 year old girls. All of the control subjects (not exposed to the commercial) correctly classified both advertised brands as lipsticks."

Now, why would little nine (9) to ten (10) year old girls be interested in lipstick, Dr. Chandler?

A- Well, perhaps it would be useful if I just said first, before I try to answer your question more specifically, what it is that Gorn and Florsheim were doing here. They took Girl Guides, I think nine (9) and ten (10) year old Girl Guides, and they exposed them to a film in which they had slipped in commercials along the way, as they weren't watching commercial television, they were presented a film, a television film, and Gorn and Florsheim had inserted advertisements into this as much as might occur on television and they had chosen two (2) products to -- to advertise, soft drinks, diet soft drinks and beauty aids, lipsticks and other cosmetic products. They -- they first were interested to know --

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and I speak now with specific reference to the beauty products, whether these young girls already knew about the existence of such products; and the short answer here is that most of these girls knew brand names of -- of the beauty products before they were exposed to this experimental demonstration of still additional commercials, but they then exposed the -- the groups of children to these commercials and undertook to determine whether or not the children who had been exposed to these commercials changed their views as a consequence of this exposure to the products that were advertised. And the upshot, if you will, or the short version of their results, is that as a result of this exposure, these young nine (9) and ten (10) year old girls came to express the view more so than they had previously that they would consider using beauty products in the future and that they believed that women who use such products more closely approximated their standard of beauty than women who did not.

So, the -- the result suggests the take home message, I think the intended take home message of such -- of the commercials, did in fact impact on these young girls and contributed to their view that beauty is something that can be purchased at a cosmetic counter.

Q- I'm looking at page nine six six (966), Dr. Chandler,

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under "Discussion,' under the heading "Discussion," where it reads:

"The results of the present study support the hypothesis that exposure to commercials for adult products has an effect on children."

So is it important to you that the product under review is an adult product as opposed to any product that's being advertised?

A- Well, I think it's important for the reason that one might speculate in the absence of evidence such as this, that children would be alert to child-oriented products like toys but that adult-oriented products and the advertisement of them might simply be ignored by children because their products were for a different age group than themselves.

I think the important point that Gorn and Florsheim make here is that even these products that these young girls will not likely use for some years to come are already of interest to them and that they are scanning the advertisements that were presented and coming away from having done so with a view about the importance of beauty products that is, at least, consistent with the view presented in the commercials.

Q- Could we file this article, The Effects of Commercials for Adult Products on Children, by Gorn and Florsheim,

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as AG-235.

At page six (6) of your report, Doctor, at paragraph two point one point one (2.1.1) you subhead it the "For adults' eyes only problem". What do you mean by that?

A- Well, I mean in that phrase to touch upon the matter that I discussed just a moment ago. That is, it's possible, although in my judgment wrong, to assume that there are certain events which can be walled off, if you will, for adults only, and that it's possible to protect children from exposure to events simply because they are aimed at or targeted at adults. The general point that I tried to make a moment ago is that it's the job of young persons to learn what it means to become an adult. As a consequence they are active antenna alert to adult-oriented events, and that one has, I believe, little hope of shielding children from events simply by tagging them or earmarking them as for adults' eyes only.

Q- At page twelve (12) of the report, you refer in subparagraph three point two point one (3.2.1) to the forbidden fruit problem. In what context do you make that reference?

A- Well, if it's the case that children are scanning the environment for evidence as to what it might mean to be

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an adult, they can look broadly and do look broadly at all the things that adults do. But if you want, as a child, to find good evidence as to what constitutes, or what is entailed by being an adult, then those things which are forbidden to younger persons, or which are engaged in exclusively by older persons, are the kind of evidence that is clearest in your mind to know what it means to be an adult.

So, for example, only adults, or almost adults have children, they -- only adults are permitted to drive. It's also true that they're not permitted to buy alcohol or cigarettes. And so these are -- these are things operating in society that are earmarked as, if you will, forbidden fruits for children.

And if the child's task is to learn what it means to be an adult, then it's precisely these things that are so earmarked that offer the child the best evidence as to what it might mean to be an adult. This is why children rarely play at being children. Children play at being grown ups and, when they do this, they pretend that they're mommies and daddies, they pretend that they're driving cars, they pretend to drink or smoke. These are all activities which are easily identified by young children as clearly adult activities.

Q- Well, do these children simply copy their parents, Dr.

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Chandler?

A- No, I think the evidence suggests that they search widely. Well, certainly they do copy their parents, but it would be a mistake, in my judgment, to imagine that children turn only to their parents as models for what it means to be an adult. In my earlier example, I suggested that children believe that kitchen products are appropriate for their mother, even if their mother doesn't go into the kitchen, or that a pipe is an appropriate present for their father, even if their father doesn't smoke.

I think it's clear that when you count the number of children wearing Michael Jackson gloves or doing moonwalks or any great variety of things that children do, that they're finding role models and images of what it means to be older than they are, or images of what it means to be an adult, well beyond the circle of their own family.

THE COURT:

Michael Jackson gloves are out now.

A- I think they are, but the example came into my mind earlier when I was writing the report.

Q- Now, it's Vuarnet stuff and Levis.

A- Yes.

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Me BAKER:

How would you like to wear the red gown for a couple of minutes?

Q- Now, Doctor, you've so far talked about the cognition of young people and you've talked about the social emotional problems that children are going through as though they're separate entities. You've discussed them separately. Are they really to be understood by the Court to be separate issues, entirely separate?

A- No, as I think I said extremely briefly at the outset, one may, for analytic purposes, try to choose to talk about cognitive factors or social emotional factors as though these were intended. Each action on the part of a child, each behaviour, is -- in every instance, draws upon the resources of both of these domains.

In some of the examples that I've given towards -- I've talked, as an example, of the centered cognitions of young children, the fact that they have difficulty making value judgments in situations where you must keep two (2) things, keep track of two (2) things at once.

So I was giving that as an example of the cognitive limitations. I mean it to be obvious, or at least I mean to stress the point now, that this is very much a social activity. It involves other people and children's thinking about their social world and in much

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the same way my example of childhood egocentrism which was offered as an instance of the cognitive limitations of young children, is quite properly a cognitive limitation. But if you're not able to take the roles and perspectives of others or even to recognize that other people have points of view different from your own, then this puts one in social jeopardy or at least it creates social difficulties.

Certain of my research has been about the fact that children who persist in being unable to take the points of view of others often end up being earmarked as delinquent or such children are often found in psychiatric settings for troubled children.

Q- Now, Doctor, I'd like to bring this discussion to bear a little more closely to the case in respect of advertising.

So my first question to you is: are children aware of any kinds of advertising in general?

A- Well, I think there's an enormous amount of evidence, especially if one includes evidence about children's alertness to television advertising, as well as other media advertising, that young children, from a very early age, know about and recall and take away knowledge about advertisements of a great variety of sorts. I think there are literally hundreds of studies in the

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literature that demonstrate this point, which I think, at least among developmental psychologists, is really seen as an unarguable.

Q- Now, how aware are young people of ads directed at adults for adult products?

A- Well, I have already referenced the Gorn and Florsheim article, which I think makes the case clearly that young children, in this case children of eight (8) or nine (9) years of age, are already both alert to advertisements that they've seen in the past about beauty products and are also easily influenced by still further exposures to such ads. So, in my judgment, it would be a mistake to imagine that children are alert only to child-oriented products and not alert to adult-oriented products.

Q- M'hm. How aware are young children of cigarette advertisements, Doctor? And I'm placing before you an article by Simon Chapman and Bill Fitzgerald entitled: "Brand Preference and Advertising Recall in Adolescent Smokers, Some Implications for Health Promotion."

Me POTTER:

Is this in your report, Mr. Baker?

Me BAKER:

No. No, it's not.

Me IRVING:

Just a moment. May we just have a moment to look at

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this, My Lord?

THE COURT:

Yes.

Me BAKER:

Q- Dr. Chandler...

Me IRVING:

Just a second, please. My Lord, I wanted to have a look at this article, if I might, just before we -- before we go on. It is not cited in the report, and of course, one of the purposes of filing an expert report is that the other side gets notice of these things and has a chance to read them anytime. It is cited in the report of Dr. Best, who is now not to be called, but not in Dr. Chandler's. My Lord, to save the time of the Court, I'm going to make the same objection I made in respect of the earlier article. I don't think I need to go through the reasons again.

THE COURT:

Surprisingly enough, same result: under reserve.

Me BAKER:

Q- The question was, Dr. Chandler, are children aware of cigarette advertisements?

A- Well, drawing on this article to help frame my answer, I should point out to the Court that this is a study involving Australian children, although I take it, for

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my purposes at least, that that's not likely to change things. It's also worth noting, I think, that these are seventh (7th) and eighth (8th) grade children, and so this age group somewhat cuts across my arbitrary division of children and adolescents, although essentially half of these children are twelve (12) or under.

Essentially what Chapman and Fitzgerald did was take the existing print ads and obliterate certain words on these that would define the brand and simply asked kids to look at these now altered ads that obscured what kinds of ads they were, to see whether children could name what product was being shown in this ad. And the upshot of this study, in my judgment, is that, by and large, these young persons were extremely capable of identifying what kinds of product or what kind of brands they were -- of cigarettes they were being exposed to. I should also draw attention to the fact that this point that I've just made that children are, in fact, aware of these brands is much truer for children who already begin to smoke, have already begun to smoke, and I think that, at least to me, that seems an understandable conclusion, but I do draw your attention on page three nine three (393) to the table...

Q- Four nine three (493).

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A- I'm sorry, four nine three (493), at the top of the page, where there is a Table 4, and it lists there, under -- in the rightmost column, the group of non-smokers, and goes on to detail what percentage of these young persons were already aware of the existence of these brands. It's maybe also worthy of note that the one (1) which they're -- which is at the top of this list, it's Winfield, I believe, it's not a...

THE COURT:

Chesterfield, isn't it?

A- Well, no, I think it's a brand that we don't know in Canada. I believe it is Winfield.

Q- Winfield, yes.

A- The reason that I know that is that there is an earlier article by the same Chapman, although this time, I think, writing only on his own, in which he deals with an issue that came, I think, before the Australian Court. At least it was the case that Winfield cigarettes used Paul Hogan, the Paul Hogan of Crocodile Dundee fame. Although I think this was before he had done his movies. They were using him as a -- as a person to promote these cigarettes and -- so I think a group of citizens protested this because he was perceived to be a personality especially attracted -- attractive to young persons. I'm not sure of all the

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details of that but...

Me BAKER:

Q- That's all right. What we're really trying to do is pin down for the Court whether it's Winfield or Chesterfield.

THE COURT:

I think it's Winfield. If you look at the previous pages...

Me BAKER:

Okay.

A- So just by way of -- of summarizing the point that I've made, I think this article -- and there are certainly others -- make it clear that young persons are alert to the existence of cigarette advertising and can reflect that awareness in -- in research settings.

Q- Could we file this article as by Chapman and Fitzgerald, "Brand Preference in Advertising Recall in Adolescent Smokers, Some Implications for Health Promotion," as AG-236.

THE COURT:

Under reserve also.

Me BAKER:

Now, you also may recall, My Lord, that at the beginning of every book of transcripts we get, the objections are always listed.

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THE COURT:

Are listed, yes.

Me BAKER:

Q- In connection with the same question, Dr. Chandler, as to whether young people are aware of cigarette advertising, I am placing before you an article entitled "Children's Perception of Advertisements for Cigarettes," P.P. Aitken, D.S. Leathar and F.J. O'Hagan.

Me POTTER:

Is this one in the report, Mr. Baker?

Me BAKER:

No, but I don't think that this one should surprise you gentlemen.

Me IRVING:

It's in Dr. Best's report again.

Me BAKER:

Yes, but one (1) of your own experts, as you know. This report was never ultimately produced with reference to this article, so this one will come -- the existence of it will come as no surprise.

Q- Now, what did Aitken, Leathar and O'Hagan find in connection with the awareness of young people of cigarette advertising, Dr. Chandler?

A- Well, I think this article is relevant, at least to me at this point, because I qualified talking about the

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earlier article, the Chapman article, by saying that their youngest subjects were only eleven (11) and twelve (12). In this particular article, the Aitken, Leathar and O'Hagan study, the subjects were six (6) to sixteen (16) years of age.

Q- M'hm.

A- So I think its relevance -- this is in some ways a very lengthy and complicated article, but the point that I mean to draw attention to is not, I think, complicated. The point is simply that they undertook to determine whether young persons in these age groups were in fact alert to the content of various brands of cigarettes that were advertised, and the short conclusion is that although awareness increases with age, children in every age group were aware of the existence of some of these brands. And I think perhaps one final and further point about it is that these children were also aware of what, and this is a term that's relatively new to me, it's brand personality, that children were alert to the -- some of the imagery and some of the associations that are present in advertisements.

So I take it that there are really two (2) points here. One (1) is that they're aware, and second that their awareness doesn't just go to whether these ads exist or don't exist, but rather they come away from

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this exposure with some knowledge about the "brand personality," or the imagery that's present in these ads.

Q- Can we file this article by Aitken, Leathar and O'Hagan as AG-237.

Me IRVING:

Same objection, My Lord.

THE COURT:

Same decision. Under reserve.

Me BAKER:

Q- Now, Doctor, you've just indicated that children or young people are aware of cigarette advertising generally, and you've cited Chapman and Aitken, Leathar and O'Hagan, does this awareness of these young people extend beyond the simple existence of the cigarette advertisement?

A- I think we would reference back to the Aitken, Leathar and O'Hagan article, and I should point out that these authors have written as many as six (6) or eight (8) articles, all touching upon this same topic within a couple of year period.

Q- I've placed before you an article by Aitken, Leathar, and for the purpose of the record and the Court stenographer, a new third name: Squair, encaptioned: "Children's Awareness of Cigarette Brand Sponsorship of

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Sports and Games in the U.K."

Me POTTER:

Is this in the report, Mr. Baker?

Me BAKER:

It is not.

Me IRVING:

Is it in the Best report again, Mr. Baker?

Me BAKER:

I have no idea. We're not dealing with the Best report.

Me IRVING:

Oh, no idea?

Me BAKER:

The Best report is functus, it's not been filed.

Me IRVING:

Well, it is in the Best report, My Lord, and the Court should perhaps want to note that. This is the third.

Me BAKER:

That being the case, perhaps the Court could equally take note that the Aitken, Leathar and O'Hagan article was in the Jenkins report which was never filed; Jenkins never having been produced by the other side.

Q- Now...

THE COURT:

One on both sides.

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Me BAKER:

I beg your pardon?

THE COURT:

One on both sides. You're even now.

Me BAKER:

Right.

Me IRVING:

It's three (3) to one (1), My Lord, still.

THE COURT:

Don't start another argument. Okay.

Me BAKER:

No, I'm too amused to argue the point, My Lord.

THE COURT:

That's the way to take it.

Me BAKER:

Q- The issue or the question put to you, Doctor, was: does the awareness or knowledge of cigarette advertising by young people extend beyond their knowledge of the simple existence of the ads?

A- Well, I think both the article under discussion at the moment, the Aitken, Leathar and Squair article, and the article by two (2) of these same authors that preceded it by year in nineteen eighty-five (1985), both go to this same point. I draw to the Court's attention that the -- this particular study, the Aitken, Leathar and

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Squair article is different in that it particularly addresses the question of sponsorship of things like auto racing by cigarette companies, and it really undertakes to determine two (2) things.

One is again whether these young persons are, in some sense, aware that these various brands are contributing to the financial support of these sports activities, and also again, and now, Mr. Baker, with special reference to your question about whether their awareness or their knowledge goes beyond simple awareness of existence or non-existence. The article makes the interesting point that these young persons -- and here young persons, the subjects are between six (6) and eleven (11) years of age -- these young persons come away from seeing these sponsored events, or references to these sponsored events, with knowledge of what I referred to earlier as brand personality again.

Q- If I could stop you just for a moment. Because I think you may have erred somewhat. I understand this study to deal with children between the age of six (6) and seventeen (17), Dr. Chandler.

A- You're right. I -- where it says -- when I quoted six (6) and eleven (11), they were referencing their own earlier articles.

Q- Yes.

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A- So you're correct, it is six (6) to seventeen (17).

Q- Yes.

A- So again, the upshot of this article, I believe, is that young persons in these age groups are aware that certain kinds of ways of being an adult, or certain kinds of adult roles, like being a person interested in excitement or racing cars, that children understand that this -- this particular adult role is associated in their mind with, I believe it's John Player's cigarettes which sponsors this. So when they see these activities or see these sponsored events, they are aware that this is a -- this is associated with the company that makes Player's cigarettes -- or John Player's cigarettes.

There is, perhaps, one (1) other point about this article that's worth mentioning because I think it has a relevance to the cognitive limitations of children. Among the various things that these authors inquire about is the extent of which children understand the concept of sponsorship; and I think the best way to see what they're doing here is to look at a table which they present on page two o six (206), and it's a bit of a complicated table but they take a competent explanation of sponsorship to -- to include knowing two (2) things. One (1) is that there is an economic component. That is, does the child appreciate that the tobacco company,

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in this case, is supplying money for the sports event, and the second component that they mention, also listed on this table, is whether they understand there's an advertising component. And -- now, this, then, is a bit like some of the problems that I've tried to describe more generally previously, where there are multiple components that are contributing to an adequate or competent understanding.

So if one simply takes the row in this column that is headed "Explanations of Sponsorship," it mentions both advertising and economic components. That's essentially sort of the middle of that chart. Then you notice that even when you get all the way over to sixteen (16) and seventeen (17) year olds, still less than half of the children give evidence of understanding that both of these components are present.

The line below that says -- mentions only the economic component, you'll notice that a great number -- something like a quarter (¼) of these children, even adolescent children, mention or seem to understand only that the tobacco companies are giving money but they don't appreciate that they're getting an advertising boost or benefit from this. So the assumption, essentially, on the part of these children, at least as they express it, is that through largess or generosity,

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someone who owns a tobacco company is giving money to sporting events but they don't appreciate that there is, to be gained from this, an advertising advantage. So I take that, at least for my own purposes, to be an interesting example of the multi-variate problem, something that a competent understanding of which requires keeping track of several variables. And I think this article goes some distance to making the point that even well into adolescence, many young persons fail to be able to make this connection.

THE COURT:

There are -- that's not the first one. There are handwritten notes on the article. Do you know where they come from?

A- In -- are your -- My Lord, are you referring to...

Q- Various. Page two o six (206).

A- Yes, in this case, that's a note that I've added for -- to simply jog my own memory before -- when I was reviewing this article earlier.

Q- Page two o eight (208)?

A- Page two o eight (208)...

Me BAKER:

Q- I apologize, My Lord, that is my fault and my responsibility. I thought that they had been properly expunged before we had prepared the photocopies.

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Me POTTER:

We don't mind seeing them but I'd like to know whose they are.

Me BAKER:

Well, they're not mine.

Me POTTER:

Well, are they yours, Doctor?

Me IRVING:

Two o eight (208)...

A- As I mentioned a moment ago, the one on two o six (206) is a note for myself. Maybe I can help to -- because you may have difficulty reading my handwriting here, I draw attention to the -- an arrow leading from the area that says -- mentions only either economic components or advertising components and I -- my note to myself is that it implies that they are not on guard against selling intent.

THE COURT:

Okay...

A- I could try to explain others if that would...

Me BAKER:

Q- No, it's -- if the Court needs an explanation...

THE COURT:

Two o eight (208).

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Me BAKER:

Yes.

A- Two o eight (208). Actually, in this case, this is not my handwriting.

THE COURT:

Okay, for both -- the two (2) notes at the bottom.

A- The one at the bottom is not mine. The other one says -- I can't read my own writing. Oh, it's the point that I just tried to make...

Q- Actually requires...

A- ...to you, My Lord. It says actually requires three (3) variables, meaning keeping track of three (3) variables at once.

Me BAKER:

Q- Can we file this article by Aitken, Leathar and Squair as AG-238.

Me IRVING:

Same objection, My Lord. I think we are entitled to know whose -- whose writing is on the exhibit, however. I still don't know whose writing that is at the bottom of page two o eight (208). If it's going to go in with that on it, we should know who wrote it.

THE COURT:

Is that yours, two o eight (208), no?

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Me BAKER:

No, it's not.

A- Well, excuse me, My Lord. Because I worked with a large group of students who have been interested in my appearance in this Court and who have asked to read some of the materials that I have read, this may well be a marginal comment by one (1) of my students.

Q- My Lord, as we're about to move to another subject and I notice it's, by my clock, twelve thirty (12H30), I wonder if this wouldn't be an appropriate time to break?

THE COURT:

Yes. Two fifteen (2H15).

Me IRVING:

My Lord, I wonder if I might ask, just before we break, if my friend is intending to put in more articles which are not referred to in the witness' statement, whether we might get them now so that we can at least look at them over the lunch hour? Normally they come with the report, so we can prepare ourselves.

THE COURT:

That kitchen work will be done, I understand.

Me BAKER:

That's what my nod of the head signified.

LUNCH ADJOURNMENT

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In the year of Our Lord nineteen hundred and ninety (1990), on this tenth (10th) day of the month of April, PERSONALLY CAME AND APPEARED:

Me GEORGES R. THIBAUDEAU
on behalf of Petitioner, RJR-Macdonald Inc.
Pour la requérante RJR, Colin Irving et Georges Thibaudeau.

Me SIMON V. POTTER
on behalf of Petitioner, Imperial Tobacco Limitée,
Pour Imperial, Simon Potter.

Me ROGER E. BAKER, Q.C.
on behalf of Respondent
Pour le procureur général, Roger Baker, Claude Joyal, Paul Evraire et Lise Tremblay.

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In the year of Our Lord nineteen hundred and ninety (1990), on this tenth (10th) day of the month of April, PERSONALLY CAME AND APPEARED:

MICHAEL JOSEPH CHANDLER,

WHO, having previously been sworn on the Holy Bible, doth depose and say as follows:

THE COURT:

So we're moving on to teens. Tell me about teens.

Me BAKER:

Let the record reflect that there was an aside from the bench.

A- Never talk to one who owns one.

THE COURT:

Well, you're talking to one who owns two (2).

EXAMINATION BY Me ROGER E. BAKER (Contd)
on behalf of Respondent

Q- Well, Doctor, given the question from the bench, we will put the first question of the afternoon to you. And could you tell the Court what young people really believe about the smoking behaviour of both adults and other young people?

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Me POTTER:

Objection, My Lord. This witness isn't here to tell us what young people really believe, he's here to tell us about the development of children into adolescents and then into adults.

Me BAKER:

My Lord...

Me POTTER:

He hasn't done any polling. He has no idea.

Me BAKER:

I find the objection curious, My Lord. Doctor Chandler is here as a developmental psychologist to offer his opinion to the Court. Where he gets his views from or what the exact testimony or the origin of the testimony will be made clear as he gives it, but it is extremely important for the Court to know how young people view smokers of their own group and other smokers, and what they understand about it in connection with the testimony that Dr. Chandler is giving.

THE COURT:

Under reserve.

Me BAKER:

Q- Do you remember the question, Doctor?

A- I think so, yes.

Q- All right. I would draw the Court's attention to what

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I've found to be a helpful article by Leventhal, Glynn and Fleming.

Q- Hold on for a moment. Do you have your copy of it?

Me IRVING:

Yes.

Me BAKER:

Yes.

Me IRVING:

And this one's mentioned in the report.

Me BAKER:

Yes.

THE COURT:

Is or isn't?

Me IRVING:

Is. This one is, My Lord, yes.

THE COURT:

Is.

Me BAKER:

Q- So I take it then that there's no objection, so feel free to start right in without fear of interruption, hopefully.

A- As I have with other articles, let me be cautious to begin by qualifying certain aspects of this article. First I -- although it is the case that the article takes as a jumping off place, or a premise upon which to

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begin, the fact that there has been various kind of litigation involving users and tobacco companies, it does go on, not to speak specifically about cigarette advertising as such, but about young people's understanding of the smoking enterprise at large.

So it's important, I think, to recognize that we're talking about children's general knowledge. The authors are -- point to what they generally classify as environmental factors as a group rather than in the specific -- breaking out the topic of advertising specifically.

But with those qualifications or reminders, what the authors of this study did, in short, was to inquire of over a thousand (1,000) young persons between grades four (4) and twelve (12) about their beliefs regarding the tobacco use. In particular, they inquired as to how many adults -- and perhaps the place to draw your attention here is on page three three seven four (3374), there is a table on the upper right-hand corner and it lists out children by grade level and...

Q- Excuse me. Excuse me for just a moment, Dr. Chandler. My friend Mr. Potter doesn't have a copy of this.

Me POTTER:

Thank you.

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Me BAKER:

Sorry, I didn't...

THE COURT:

What is JAMA? The Journal of what?

Me BAKER:

The Journal of the American Medical Association, My Lord.

A- So, if I can call your attention to this table, My Lord, the first column, after simply listing off the children's grade level, is their estimate of the number of adults who smoke. And the authors, and I simply take this to be factual, that it's something like thirty percent (30%) of adults really do smoke, but you'll notice that children's estimates are, I think in every case, above sixty percent (60%), and going as high as seventy-one percent (71%). And I think the thought that should be drawn from examining that column is that children essentially overestimate the number of adult smokers by a factor of two (2).

Now, if I may, the next column over does essentially the same thing, listing out how many of their peers they think smoke. And certainly for the youngest children, children in fourth (4th) or fifth (5th) grade, or sixth (6th), few of their peers are smoking, I presume, and they're not blind to that fact.

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But by the time that these children reach eighth (8th) grade, their estimate is that more than half (½) of their peers smoke. Again, I'm not expert in knowing or even -- I'm not sure how one would find out exactly how many young people smoke, but I take it that the literature suggests that again it's roughly half (½) that figure.

So the conclusion that I think the authors mean to lead us by presenting these figures is that something about their general environment, or information coming from what they call general environmental factors, have led young persons, in all of these age groups, to have a distorted or, I think, inaccurate perception of the frequency with which both adults smoke and the frequency with which young persons smoke.

Further, there's a great deal of information in this article. There are perhaps two (2) other things before we turn -- two (2) other things to mention that I think have general relevance here. One in the extreme left-hand column of this page, page three three seven four (3374), there is a major heading: "Results/Hazards of Smoking." And I think it's the second full sentence or maybe it's still the first -- no, it's the second sentence. They go on to report that of all of these, over a thousand (1,000) young persons, almost every one

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of them understands that smoking may be harmful to your health, and they go on to indicate that they can name various body parts that might be adversely affected by smoking.

So, taking note of that, they go on to inquire of these same young persons the extent at which they think these health hazards will fall upon them. That is, well, do they judge themselves to be one of this ninety-eight percent (98%) or do they think in some, perhaps magical way, that they will escape the consequences that they see for others, and believe themselves to be less likely to get sick from smoking.

Now, it turns out that thirty -- I think the number is thirty-seven percent (37%) of this general sample of children did indicate that they believed that they themselves would be the exceptions to what they see to be a very strong rule. The authors of the article refer to these children as the "invulnerables," on the strength of the assumption that these children perceive themselves to be less likely to be at risk than do others. They go on to break this down somewhat with the young persons who are themselves smokers holding to this view even more strongly, but still, even among the non-smoking population here, thirty-six percent (36%) of them categorize or locate themselves in this

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invulnerable category.

And then, finally, one (1) other thing on the next page that I think is deserving of attention. Again, in the upper left-hand -- or excuse me, right-hand corner of this page -- are the percentages of children by grade who have answered that they personally hate smoking. And while that figure continues to fall through each of the age groups that are asked this question, still the bulk of these children, and always more than half, believe or simply announce that they personally hate smoking. That figure is -- is made interesting in relationship to the very confusing table that's to the left, that is the table that sort of occupies the upper left-hand side of the page, but the particular thing that I would draw your attention to here is that in what's really the first two (2) rows of this table, and under the third column, which is -- which is referenced: percentage of peers who regard actually smoking as a bad habit, and here you'll see that among both smokers and non-smokers, that's what the first two (2) rows refer to, these -- these subjects --and I should add, these are the eight grader and older subjects -- these subjects generally think that relative -- less than half of their peers think this is a bad habit.

Now, the point, I guess to be drawn here, is that

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even though these young persons themselves hate smoking, they misperceive the attitudes that their peers hold about this same habit and I think that has -- this misperception on their part has -- has relevance to the way in which they perceive themselves of being influenced by their peers. That is, they -- the peers -- they judge the peers to see this as a less bad habit than they personally think that it is.

Q- Could we file the article as -- the "Smoking Decision and Informed Choice," by Leventhal, Glynn and Fleming -- as AG-239.

Do you have something to clean my glasses with?

Me IRVING:

So do I.

Me BAKER:

Do you need something to clean your glasses with too? Well, in the valley of the blind, the one eyed man is king, Mr. Irving.

Me IRVING:

Okay.

Me BAKER:

Before we continue, does anybody have a runny nose?

Me IRVING:

And the drawback is I'll be able to see you better now, Mr. Baker.

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Me BAKER:

I accept the compliment.

Q- Doctor, you have talked or spoken specifically to the issue of childhood cognitive limitations, referencing, I take it, when we look at the chart behind you, of children below twelve (12) or earlier. Now, what happens in the real world, do these children -- do these limitations simply disappear when children reach adolescence?

A- No, I think that the research evidence that's available on this topic makes it very clear that there is certainly no magic threshold and that really age twelve (12) is a -- is a rough approximation of the entrance to a transitional period to adult thinking and that much of -- at least early adolescence and, in certain instances, the whole of adolescence, is taking up -- is taken up with the task of readying oneself of certain of the cognitive limitations that I've already characterized as applying to children.

This is especially the case for children who are in any sense disadvantaged. There is considerable evidence to suggest that this transition period from childish levels of cognition or childhood cognition into the cognitions characteristic of adolescence, that this transition occurs later and more gradually in the case

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of those who are economically or culturally or educationally disadvantaged.

Q- For a point of reference -- sorry to interrupt you Doctor -- My Lord, we -- pages seven (7) and thirteen (13) of the report is where the issue was spoken to. Yes, you were saying Doctor?

A- Well, I think both with reference to the information that I -- I drew upon from the Leventhal et al article is -- it is simply one (1) demonstration of the fact that children, not only those in childhood, but those in early adolescence, are also led as a consequence of a variety of things, including their as yet imperfectly formed cognitive abilities, to serious misperceptions about the world in general and about the world of smoking in particular.

Q- Are there other cognitive limitations throughout the adolescent years, Doctor?

A- Yes. I think what I've just described are really the hold-over limitations, if you will, from the period of earlier childhood. There's also considerable literature, some of which I cite on page thirteen (13) and some of which I've personally done myself, that focuses on the -- on what are persistent and also novel cognitive limitations of adolescence. At least one (1) important dimension of this limitation is that because

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earlier children -- younger children are, as I've described, egocentric and only gradually come to realize that there are other points of view in the world, most of childhood is taken up by recognizing that sometimes people disagree or sometimes there are contrasting points of view or competing knowledge claims that are made but younger children tend to dismiss this controversy by assuming that one (1) of the contestants in such a controversy must simply be wrong, that they can -- they perceive that there's always an absolute answer to every question and that if contesting parties disagree, then one (1) of them is necessarily wrong at the expense of the other. As -- as they grow older, they are increasingly exposed to the fact that there are different opinions, perspectives, interpretations on almost every issue and their task increasingly becomes trying to make sense of a world where everyone sees things from their own point of view.

What much of this research literature suggests is that when this increasing awareness impresses itself on young people, they tend to defend themselves against it, this uncertainty, by assuming that everything is just simply a matter of opinion, that no opinion has better legs to stand on than another. That each of us is caught up in our own subjectivity and that we simply --

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it's simply a matter of opinions passing like ships in the night. So they essentially reach the point that all matters of competing knowledge -- all competing knowledge claims are simply understood as matters of personal opinion that have no more standing than their own personal opinion.

Q- Doctor, would you give the Court, please, some examples, from the literature, of what you have just said?

A- Well, there have been a number of efforts to try to recognize when it is in the lives of young persons that they come to this lack of -- or this conviction that everything is simply a matter of dismissable personal opinion. The way in which this is commonly done is you -- you expose children to two (2) competing claims about the world.

There is a study which I -- some of these studies are my own but others by persons like Diana Kuhn use as an example, they invent -- they invent two (2) competing claims about some event in the world. In one (1) of these, they invent a country called Lidvia and...

Q- How do you spell that?

A- I'm not sure that I know how to spell it. L-I-D-V-I-A, but you could spell it any way because it doesn't exist. It's a fictional place.

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THE COURT:

Like Utopia.

A- Yes.

Me BAKER:

Q- Just for the fun of it, do you want to...

A- But -- so children are asked to read two (2) paragraphs. One (1) purported to be written by a historian from North Lidvia and one (1) by a historian from South Lidvia and each of these historians claim that while things were a bit confused, it's obvious on its face, for the following reasons, and a few reasons are listed, that the North Lidvians won the Fifth Lidvian War, or the historian from the South Lidvia announces it's the South Lidvians who won this contest. So children are simply asked to -- or adolescents are asked read these competing accounts and then explain how this could possibly happen.

So if you present this problem to children, children under twelve (12), they simply announce that either the North or the South Lidvian historian is simply mistaken.

Adolescents, by contrast, explain that everything is just a matter of opinion, that anybody can hold to any opinion they wish and there is no reconciling these competing positions.

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Now, certainly there are occasions in which adults agree with this. We may choose to assume that our tastes in music are simply matters of opinion that can't be arbitrated but, certainly, it's the business of adults to recognize that almost every matter of importance is a contested matter and we're not free, as adult -- as adolescents seem to believe themselves to be free, to simply throw up our hands. We are forced to try to -- to decide between competing knowledge claims, which has the better reasons or better evidence or better legs to stand on.

This is not a task which adolescents undertake. They decide that how late they should stay out or up or any other matter is simply a matter of personal opinion, they should be allowed to do their own thing and they only capitulate under pressure or force. That is, they see no grounds upon which one (1) belief about the world could be judged to be more adequate than other beliefs about the world.

Q- Doctor, bringing it closer to home -- by home, I mean the subject matter of this trial, I'd like to put a hypothesis to you. Assume that the authorities and doctors say and get the word out that smoking is dangerous. Assume that the tobacco companies say that the health issue is only a controversy. Assume that the

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advertisements of cigarettes present imagery that would appeal to young people. Could you please tell the Court, having made those three (3) assumptions, at a cognitive level, how do young people deal with this kind of problem?

A- Well, first in your question, as you phrase it, assumes that this is a hypothetical situation...

Q- Obviously.

A- ...such a -- such an inquiry has never taken place. So I have to take as my guide in answering it my knowledge about adolescent cognition and, in doing so, it would be my judgment that this would be exactly the kind of situation that would lead adolescents to conclude that since experts disagree or informed persons appear to disagree, that this is -- it might simply be a matter of opinion, that if it's a matter of opinion, their opinion has the same standing as does anyone else's, and when faced with a choice where cognition no longer serves, that is when one (1) opinion is seen to be as good as another, the thing to do is to turn to some other decision-making strategy, which often takes the form of going with your intuitions, your gut feelings, your impulses of the moment, the judgments of your peers. So, I take then your hypothetical -- your hypothesis or your proposition to -- to be that in these

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circumstances, I would anticipate that adolescents do -- will hear what they -- or want to do, generally, which is to discount situations in which there are competing knowledge claims and go with their own gut feelings and insist that they'd be allowed to do their own thing.

Q- Is that what you mean by your reference to subjective opinion at paragraph three point three point one (3.3.1) at page thirteen (13), Doctor?

A- Are you speaking of the sentence that begins:

"Adolescents..."

Q- Yes.

A- "...by contrast..."

Q- Yes.

A- "...often respond to such competing knowledge claims by concluding that everything is simply a matter of subjective opinion and so everyone should be allowed to do their own thing."

Yes.

Q- Yes?

A- That's exactly what I'm saying.

Q- All right. Now, at page fourteen (14) of the report, at paragraph -- subparagraph three point three point two (3.3.2), you use the expression "Problems in Identity Formation". What do you mean by that? What are you really talking about?

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A- Well, if I can refer you just to locate where we are in this discussion, we're speaking of adolescents and the identity issues really are part of what I am broadly calling social emotional limitations or vulnerabilities. Here the general point to be made is that it's widely understood that the central problem of adolescents, at least the central social emotional problem, is to achieve some kind of sense of personal identity, a sense of who one is to be in the world, and that much of the energies -- and, I'm afraid, much of the disruptiveness of this period -- comes about as a consequence of the fact that adolescents are actively at work trying to decide exactly what sort of person they will grow up to be. People who I've cited here in my report are people like Eric Erikson originally, who wrote extremely broadly and deeply on this topic and other more empirically-oriented people such as James Marcia and many others, have tried to explore this period of adolescent development. It's sometimes referred to as a moratorium period.

Q- Could you explain what you mean by the use of the expression which I find in the middle of page fourteen (14)?

A- Well, the -- it's a catch word or a piece of psychologist's jargon, I suppose, to reference just

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these things that I've been describing. What is meant to be captured by this word is that, at least in our society, at this time in history, adolescents are given a kind of a moratorium. That is a time in which they're allowed to explore and try on various adult roles or lifestyles or behavioral patterns and, at least, I think in our own culture and in many others, this is a time at which exploration and provisionally trying on various adult roles is tolerated, whether it's learning to -- whether it's trying on being something that adults might like, like a four H person or deciding to try on orange hair or studded leather gear. These are options, these are explorations on the part of young persons to try out what it might be like to be in one (1) lifestyle or another.

Q- I notice, Doctor, again at page fourteen (14), about two thirds of the way down, you say:

"...while sometimes this experimentation turns out to be rather benign."

What do you mean by your use of the word benign?

A- Well, I only mean that if it's the case, and I think it generally is understood to be the case, that young persons try on various roles or behavioral patterns or lifestyles, that some of these life -- some of these attempts are unlikely to trap them or start them down a

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road from which they have difficulty returning. So while it may be relatively benign to decide that you're going to become a rock star, it's not so benign if you decide, as a young person, to become a mother, for example, to try that role on, because there's no easy backing away from some of these exploratory attempts.

Q- I notice further down, Doctor, in the same sentence, you use the expression "Highly distorted image of the social world." What do you mean by that?

A- Well, the -- the phrase comes from a clause in a sense that it says some of the images provided by the mass media and lifestyle advertising do young persons a serious disservice by conveying a highly distorted image of the social world that goes on. But what I have in mind here is that on -- I take it that a particular habit or behavioral pattern, like smoking, for example, is a great mixture of things in the real world. I am a smoker and I speak with at least personal authority. It's expensive and, for me, not a very attractive habit. It also has -- but the advertisements often associate it with attractive lifestyles.

So, when I say, as I have here, or I speak of distorted images, then I only mean an image or set of images that are biased or less than well-rounded. If we saw advertisements that showed other aspects of smoking,

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then I perhaps would not characterize them as distorted images.

Q- M'hm. Now, you go on to say, in the same paragraph:

"Particularly unfair are those messages that help to steer such vulnerable young persons."

I'm interested in your use of the expression: "particularly unfair," Doctor. What do you mean to say by that?

A- Well, I -- certainly there's a bit of a value judgment, but it's the kind of value judgment that as a person who's devoted his professional life to trying to be helpful to children, in some way I feel I'm entitled to. But what I mean in particular is that -- and I really refer back to the same point that I was making in talking about some experiences are benign and not others.

So I think any opportunity that is put in children's paths or any way in which they're encouraged to explore certain kinds of habits or lifestyles, that have the feature that you cannot easily set these habits or lifestyles down, is unfair in the sense that it catches young persons at that moment in their own development when exploring all kinds of lifestyles is what they should be doing.

But I -- at least to me, it would seem unfair to

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put in their path or encourage them in any way, to adopt habits, lifestyles, behavioral patterns which they have great difficulty setting down again or could not easily reverse.

Q- Dr. Chandler, do adolescents stereotype smokers?

A- Yes, I think everybody stereotypes smokers and many other people. Yes, I think that they do.

Q- I am placing before you, perhaps you have it, an article called: "Self-images in Cigarette Smoking in Adolescence," by Chassin and Presson. Did I give you a copy of this?

Do you have a copy of this, Mr. Potter?

Me POTTER:

Yes, I do. Thank you.

THE COURT:

Was it in the report?

Me IRVING:

No.

Me BAKER:

Objected?

Me IRVING:

No, My Lord, it's not in the report, it's again in the Best report. Same objection.

THE COURT:

Same ruling.

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Me BAKER:

Q- I was asking you, I believe, whether adolescents stereotype smokers and how this discussion relates to the discussion that we have just had.

A- Well, again, let me begin any comments about this article by drawing your attention to the fact that it concerns ninth (9th) and tenth (10th) grade classes, students in such classes, and secondly, that this is an inquiry, or the subject of inquiry is these young persons' stereotypes or beliefs about smokers and themselves, not in any specific way about advertising as such.

But, in short, what they do in this study is to get kids, these young people to describe themselves as they now see themselves. To describe themselves as they would like to become. To describe what their stereotype of smoking boys and girls, non-smoking boys and girls, and their ideal date. And so in each case they create, through a fairly elaborate statistical procedure, a kind of stereotype of smokers and non-smokers, of present self-concept and their ideal self-image.

And so the thrust of the article then goes on to make the point that young persons whose ideal self-concept -- that is, what they'd like to become -- is like their perception of smokers or themselves more

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likely to become smokers in the future.

I should also draw your attention to the fact, and this is a point that occurs in other articles, that when you ask children about their stereotype of smokers, these young persons have a very ambivalent attitude toward the smoking enterprise and smokers in general. That is, they list out a whole series of extremely negative attributes about smokers. But interestingly, they also list out other positive attributes of smokers and many of these attributes have to do with such things as appearing more grown up than one is, of liking members of the opposite sex, of being exciting persons, persons who are like one's ideal date.

So the point to which I draw your attention is first to make it clear, if I can, that children in this age group, and in fact every age group that I know that have been tested, children have many negative views about smokers and smoking. But at the same time they have -- these views are not universally negative, but rather ambivalent, and that the aspects or attributes or features that they believe are associated with smoking are, for them, often very attractive attributes.

So, on the basis of this and related findings, I think that one can assume that each child looks at the prospect of smoking, realistically sees many of its

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negative attributes, but has been led through who knows what to associate a number of very positive attributes with smoking and that, given this mixed case, some of them, I'm sure, will elect to avoid smoking to avoid having these negative attributes become part of their self description. But others, I take it, will decide in the opposite direction and find the attractive things like looking tough, being exciting, like being like an ideal date, that they will attach enough positive valence to this that they will be drawn to a lifestyle, some of them will be drawn to a lifestyle that includes smoking.

Q- Thank you. Could we give a number to this, My Lord, AG-240.

Doctor, you said this morning at one point in your testimony, and I think it is in your report, that children don't play at being children, they play at being adults. You recall having said that?

A- Yes, I do.

Q- Now, I put this question to you as a developmental psychologist -- or the next question to you as a developmental psychologist. In your view or in your opinion, would lifestyle advertising be more appealing or attractive to young persons if young persons were in the ads as opposed to adults?

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A- Well, without presenting myself as any kind of expert on how to make ads of any sort, on the strength of all that I've said about children and adolescents' drive to understand and model themselves upon the adults around them, then I can only believe that seeing attractive -- seeing adults of any sort, but especially adults pictured in some attractive lifestyle, that that would be more a powerful inducement to cigarette smoking for young persons than if you put the same ad with their own age mates in it.

Q- Dr. Chandler, and this is my last question, have you formed an opinion as to the possible effect on young people if there were a complete absence of cigarette advertising?

A- Well, first, let me be precise here, because I've been very careful, I think, to not present a case that I think could not be made at all. That is, I've not tried to present the case that advertising causes children to smoke. I think there is no evidence to that proposition if one takes a very narrow and classical conception of the notion of cause, nor do I think it's possible, in light of the ethical considerations that I have discussed earlier, to do an experiment that would prove absolutely that cigarette advertisement causes children to smoke.

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So, having said all that earlier in my testimony, I want to be sure and be consistent now. I can also not say that an ad ban would cause children not to smoke.

But having said that, I think the thrust of my remarks here today have been that children of all ages, up through and including adolescence, have more or less serious cognitive limitations that make it very difficult for them to process information of the sort that is presented in cigarette advertisements. They also have important social emotional limitations that draw them to such advertisements. And so on the strength of these two (2) aspects of children's -- young children's functioning, their lack of cognitive competence, their social emotional maturities, I see them as vulnerable to cigarette advertising in the sense that they are drawn to this imagery and lack the cognitive competence to evaluate the messages being presented.

So, on the strength of all of that, I have the personal view that if there were no advertising for cigarette products, that the effect of it would be to reduce the association in children's minds between cigarette smoking and what it means to become an adult or to lead an attractive lifestyle and that in the absence of those associations I can only assume that

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fewer children would smoke, that present smokers would be less likely to smoke as much, or I can only assume that in the absence of such a ban children might be more likely to quit.

I want to be very clear here that I am in no sense trying to win any kind of case to the effect that advertising is the principal cause of children smoking, but all of this evidence and all of the ways of children that I have described conspire to make advertising of the sort that I've discussed an inducement to smoke, and in the absence of such inducements, I can only believe that smoking behaviour would reduce.

Q- Thank you, Doctor, I simply want to make -- ask one question that involves a clarification. Several minutes ago you said: "in the absence of such a ban children would be less likely to continue smoking."

A- Yes.

Q- Given what you've been saying here for the last four (4) or five (5) hours.

A- Yes. No, it's difficult on my feet to keep track of the fact that the ban is already in place and that what's at risk to being absent is the ban itself.

So my point, if I've been less than clear, is that all of these remarks that I've just made are to the point that if the current ban were lifted and

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advertisements returned as they existed before, then these would be inducements. In their absence, I can only assume that children will smoke less.

Q- Thank you, Dr. Chandler. My Lord, I would like to give a number to Dr. Chandler's...

THE COURT:

Yes. I was going to say that just before you sat down.

Me BAKER:

It's comforting to know that I get help from time to time. This would be AG-241.

And, My Lord, I would like to produce that exquisitely written Picasso, drawn Picasso-like figure that you see in front of you, as AG-242.

Thank you, Doctor.

THE COURT:

We'll call that...

Me BAKER:

Age Chart or Cognitive and Social Emotional Chart in Respect of Certain Ages.

THE COURT:

Chart.

Me THIBAUDEAU:

Le titre était plus long que la "chart."

Me BAKER:

But that's the point, Mr. Thibaudeau, I was trying to

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confuse you again.

THE COURT:

AG- what?

THE GREFFIER:

AG-242.

THE COURT:

242. Do you want to break now or do you want to start now?

Me POTTER:

Perhaps a break now, My Lord, would be convenient. Thank you.

SHORT RECESS

THE COURT:

Somehow I figured that it was you going to be first. That was believed somehow.

Me POTTER:

A premonition again, My Lord.

Me BAKER:

What was the basis of that guess?

THE COURT:

I don't know.

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CROSS-EXAMINATION BY Me SIMON V. POTTER,

On behalf of the Petitioner, Imperial Tobacco Limitée:

Q- Doctor, we've met in the hallway, I'm Simon Potter. I represent Imperial Tobacco.

A- Yes.

Q- By the way, Doctor, who did win that Lidvian war?

A- Well, I think if one had access to adequate evidence, one could perhaps make that judgment.

Q- You're saying you don't know who won it?

A- Since it's hypothetical, I think the answer is also left in question.

Q- It's left in -- in fact, the historian from the north has just as much chance of being right as the historian from the south?

A- No, I think that would be, perhaps, in this hypothetical example, that might be the case.

Q- Yes.

A- But if, as adults, every time we found that two (2) serious contenders disagreed, that we felt we had to throw up our hands, then I suppose many institutions would close down, the Courts for example.

Q- Yes. I'm being a bit lighthearted about it, Doctor, but the point I want to get at and I -- I think you'll agree, is that an adolescent, indeed, anyone, certainly myself, although sometimes I behave like an adolescent,

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when faced with that hypothetical situation is very likely to conclude well, my goodness, either one of them might be right or neither one, isn't that right?

A- No, I think that's not right. I think that in most cases, and including the example that I have given, that older adolescents and most adults, when confronted with a range of evidence, don't simply throw up their hands and assume that it's all a matter of blind liking. They assume, instead, that serious matters of debate are to be settled on the strength of the better evidence and so, no, I think it -- it's true that there are circumstances. I gave some as examples, one's taste in music would be an example, at which adults might agree to that this is -- is simply a matter of taste and leave that debate lie. But about serious matters of contention, I think adults are neither free to do that nor do they commonly do that.

THE COURT:

I just want -- have one subject that goes directly against what you're saying. I'm thinking of abortion.

Me BAKER:

I'm sorry, My Lord, I didn't...

THE COURT:

Abortion, for example, where you have a topic where both views are expressed.

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A- Well, I think your example is well chosen because the debate here is -- a metaethical or moral debate, not a debate that centers upon matters or fact. So, not every contentious matter is a matter which can be settled on the basis of empirical evidence or factual or objective matters and your example is, I think, one (1) of them, but I think we're fortunate that not all of the conundrums that we face are metaethical debates and that many of the important issues are advised by facts and by objective matters and, whenever that's the case, even though adults never draw back from the recognition, that all knowledge is, in some sense, personal and subjective. They settle questions of contested knowledge claims on matters of fact by searching for the better evidence. So, in general, then, I must end I guess, by disagreeing with Mr. Potter's contention.

Me POTTER:

Q- Well, the example of the abortion is actually not a bad one, Doctor, because where I'm leading is -- though I hadn't thought of it, it's still good.

THE COURT:

Thank you, Mr. Potter.

Me POTTER:

Q- Because there is a situation in which there are various opinions covering a spectrum and, nevertheless, I think

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it's fair to say that adults, adolescents, even children, can still have very strong opinions about where they stand. I don't think you're saying, Doctor, that -- that adolescents are quick to have no opinion. I think what you're saying, and I want you to correct me if I'm wrong, is that debate on both sides of an issue leave adolescents free to pick their own opinion, is that correct? They might very well have a strong opinion?

A- It's never been my contention that adolescents don't have strong opinions and, yes, I do agree, and in fact it was my point, My Lord, just a moment ago, that the abortion example is probably a very good example. Nor is there any shortage of other contested matters about which issues of fact and objectivity have little bearing. So it's never been my contention that all contested matters in the world will fall into this category -- will fall into either of these categories.

My only point here is that there are many issues, very important issues in which adults come to conclusions in the face of competing opinions. Certainly, adolescents are very quick to form opinions, and are quick to take action, to act impulsively. And, in fact, that's one of the reasons that, in my judgment, they need the careful protection and guidance of adults.

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Q- Well, all of us who have or know children will agree with that, that we should help them.

Now, I'm glad you've said what you've just said, Doctor, because at page eleven (11) of your report, I have to say I was troubled by this at first, but perhaps you're setting me -- setting me right.

Now, first of all, before we get into it, Doctor, this is my own subjective view and I have my own opinion on it, but I'd like to put it to you, your oral presentation this morning and this afternoon has left me with rather a different impression than what is in your written report and I want to make sure before going into your report that you have nothing in your report you'd like to change, nothing you'd like to retract or change. It was, after all, written some time ago. Is there anything in here you'd like to change or back away from or qualify?

A- Nothing leaps off the page at me, but perhaps you'll find something that, in retrospect, I should reconsider. But, no, at the moment, I'm quite content to stand by my report as written.

Q- Okay. Well, here we are at page eleven (11), and we have a page here about the failure of probabilistic thinking.

A- M'hm.

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Q- And what we read here is that children have difficulty dealing with probabilistic statements. We see a third of the way down the page that statements such as cigarette smoking is known to be associated with something or may lead to something, for example, are ones which young children's intellects leave them poorly prepared to deal with.

I think you've corrected me now, Doctor, you're not saying there that that leaves children in a vacuum with no opinion about cigarettes, are you?

A- Well, I think it has nothing to do with matters of opinion at all. If you're referencing the sentence, the authority -- the authoritative claims that cigarette smoking is known to be associated with or may lead to health problems, for example, and these are, I take it, paraphrases of the sort of things that appear on cigarette warnings. But I'm suggesting that in general statements that are couched in probabilistic language are statements that young persons have difficulty dealing with, because the whole enterprise of dealing with proportions or ratios are very difficult for young children and continue to be difficult, even for young adolescents.

Q- M'hm. I think what you're saying then is that a direct bald statement is easier for a child to understand than

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something couched in probabilities and statistics?

A- Yes, that would be true if there were no second person standing at their other shoulder offering them a contrary but equally bald assertion.

Q- Right. And so a bald statement such as: "smoking causes cancer," that's something a child would understand?

A- Yes, I think I've already testified from one of the documents that I cited that ninety-eight point six percent (98.6%) of young persons from various ages, I think, from fourth (4th) grade forward, state that smoking is bad for your health.

Q- Yes. That's in Exhibit AG-239 and it's at page three three seven four (3374).

A- Excuse me. Leventhal.

THE COURT:

M'mm?

Me POTTER:

It's the Leventhal article, My Lord, Exhibit AG-239 at page three three seven four (3374).

Q- I don't mean to go into that article in detail, Doctor, we'll have more fun with the articles tomorrow, but I just want to get it clear with you...

Me BAKER:

Are we going to make paper hats out of them, Mr. Potter? What do you mean by having more fun with them tomorrow?

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Me POTTER:

Well, we'll wait till tomorrow.

THE COURT:

He enjoys reading them and discussing them was what he meant.

Me POTTER:

Q- I just want to get it straight from you, Doctor, that as far as you're aware, these problems, these failures of probabilistic thinking aside, the vast majority of children accept that smoking is a dangerous thing?

A- Well, I think, since we're speaking of the Leventhal article, it would be a mistake just to concentrate, as I think you are, on the paragraph that begins with a heading: "Results," where it says that ninety-eight point four (98.4) -- I misspoke it a moment ago, I said ninety-eight point six (98.6) -- percent of young persons accurately recognize that smoking is harmful to your health. It would be a mistake, I think, to simply read that statement without going on to recognize that the principal point of this whole section, and emphasized very strongly in the discussion and conclusions, is the fact that despite the fact that they understand at some level the bald assertion that cigarettes are harmful to your health, they go on to count themselves, at least thirty-seven percent (37%) of

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them, count themselves as not -- as being invulnerable. And my point earlier, in referencing this, was to draw your attention to the fact that the very cognitive limitations that I've been discussing contribute to the fact that they seriously misjudge the likelihood that they will become victims of whatever ill consequences befall smokers and so even though they have, I understand, been likely exposed to bald assertions like smoking causes cancer, they manage, through their own cognitive limitations, to reach the totally illogical conclusion that thirty-seven percent (37%) of them are somehow going to be in the one point six percent (1.6%) who don't get ill.

Q- Well, Doctor, just to be clear about what's in that article, let's not misrepresent what's in there, thirty-seven percent (37%) are categorized as thinking of themselves as "invulnerable," but all they really said was that they are at less risk than most people.

A- That's all they...

Q- Isn't that what they said?

A- That's all they were asked.

Q- That's right. And so thirty -- sixty-three percent (63%) of the ninety-eight percent (98%) considered themselves at just as much risk as anybody else, didn't they?

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A- Yes, although I'm very concerned about this thirty-seven percent (37%).

Q- All right.

A- I hope we all are.

Q- Okay. Now, all I want to get out of you, Doctor, is that all these problems of probabilistic thinking and the difficult -- cognitive difficulties of children aside, children understand very well that smoking is harmful?

A- Yes, but as I remind you, they don't reliably personalize this knowledge and assume that it applies to themselves.

Q- Yes, although most of them do?

A- And yes, but many of them don't, yes.

Q- Okay.

THE COURT:

Isn't it true in a sense, also, with adults?

A- My understand -- my knowledge of the adult literature is not very deep but it's also my understanding that, particularly adult smokers, minimize the health consequences. It's interesting here -- and I don't know the statistics on adult smokers, but the thrust of your question, as I understand it, is that if a person were a smoker, then it's not hard to empathize, perhaps, with them, that they would minimize the health consequences

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because they're really caught in a paradox because they're doing something that they've announced is harmful to their health. But, at least in the case of the Leventhal article, most of these children who are being asked this question aren't smokers and of those children who are not smokers, or at least not yet smokers, still thirty-six percent (36%) of them believe that smoking wouldn't hazard their own health.

Me POTTER:

Q- Are you worried about them too?

A- Those are exactly the ones I was worried about. The thirty-six percent (36%) -- I don't know what thirty-six percent (36%) of all the Canadian children are, what that number would amount to, but it's a number worthy of our concern, yes.

Q- Okay. Now, you are a child psychologist but nevertheless, to get there, you had to study psychology generally, and wouldn't you say, Doctor, that whatever risky activity we take, let's take drunken driving -- we can all agree that driving drunk is risky but wouldn't you agree that most adults would say I present less of a risk than most other people do if they drive drunk?

A- I'm not really qualified to answer that question. I'm aware that people minimize the hazards that they pose to others when they act in -- in unreasonable ways, yes.

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I'm aware of that.

Q- And don't -- don't adults also minimize the hazards that they pose to themselves?

A- It would not surprise me if that were true.

Q- Now, you say you have not studied cigarette advertising's effect on children, is that correct?

A- That is correct.

Q- Have you, yourself, studied advertising's effect on children?

A- Do you mean have I conducted research on that topic?

Q- Yes?

A- No, I've conducted no research on this topic.

Q- No. And were there ethical considerations which stopped you from doing that?

A- I would misrepresent myself, if I were to suggest to you that the only reasons that I have not done this work is for ethical reasons. I think social scientists, such as myself, choose the problems that they study for a great variety of reasons, including -- and this characterizes my own choices -- where, I think, basic research can be undertaken. So, I have chosen to research the topics that I have, all of which I strongly believe bear upon this question, the whole question of smoking. I have chosen to study those for the reasons of my own intellectual history, but were I to turn my attention to

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the study of children's response to cigarette advertising, I would find myself handicapped because the kinds of research that need to be done for methodologic reasons to try to settle strong questions about cause and effect, are simply disallowed, not simply by rules or external authorities but because, acting out of good conscience, I would not personally expose children to massive doses of cigarette advertising, which I think you would have to do if you wanted to really conduct the kind of experiment that would get to the -- to the ultimate issue of classical notions of cause.

Q- You've just used about six (6) times the word "would," Doctor. I take it that you've never actually posed this problem to yourself? You haven't examined the influence of advertising at all on children. I put it to you that you've never even considered, until receiving this mandate, doing any study on the effect of any advertising, cigarette advertising or any advertising on children, isn't that correct?

A- It has not been part of my research agenda to study cigarette advertising, no.

Q- All right. Now, you've been a professor now since -- I've forgotten when it was, nineteen -- nineteen sixty-seven (1967) or something.

A- Yes, nineteen sixty-nine (1969), I finished my

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post-doctoral work.

Q- Nineteen sixty-nine (1969), you began at Rochester, and you've been a professor since then?

A- Yes, that's correct.

Q- Right. And I understand that while you were at Rochester, which was until nineteen seventy-seven (1977), thirteen (13) years ago, you did a half day a week of consultancy at a clinic?

A- Yes, that's correct.

Q- Right. And have you done clinical work since then?

A- I do research with clinical patients but I do not offer treatment or diagnostic services.

Q- So, for the past thirteen (13) years, you've done no treatment or diagnosis of children?

A- Yes, that's correct.

Q- Right. And the consulting which you do do, am I -- would I be right in saying that that's all with problem children? You're not looking at normal run of the mill children who don't have to go and see a psychologist?

A- I'm not clear about your question because I just said that for thirteen (13) years I haven't done any work.

Q- I'm sorry, the consultancy which you did then before thirteen (13) years ago?

Me BAKER:

Before thirteen (13) years ago? When are we talking

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about, nineteen sixty-nine (1969) to when?

Me POTTER:

Q- Nineteen sixty-nine (1969) to nineteen seventy-seven (1977)?

Me BAKER:

Now, what is the question?

Me POTTER:

Q- The consultancy you did during that time, would I be correct that it would be in relation to children who are presenting a problem?

A- Yes, that would be correct.

Q- Yes, so it would be in relation to the people who showed -- I think you referred to it as a disadvantage, earlier?

A- Well, earlier speaking of educational, economic and social disadvantage and, in here I mean to reference not children who are necessarily earmarked as being psychopathological or in trouble with the law or anything else, but simply the fact that not everyone who is a child is equally advantaged.

Q- Okay, so, Doctor, have you done any work at all, any clinical work or research work using actual children, since getting your Ph.D., using a group of children who are just normal children?

A- Oh, yes, I do this on a daily basis. Most of the items

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in my c.v. concern the development of normal children. Perhaps only a third or a quarter of my work undertakes to explore the relevance of these findings as they emerge in the study of normal children, to try to see their relevance to disturbed children.

So, just as an example, I've done and published at least a half a dozen studies on the issue of egocentrism that we dealt with earlier, all with normal children. Although there is also a study in my c.v. that describes the relevance of this to troubled children.

Q- Okay. Now, Doctor, let's go -- we've talked about the children with their cognitive limitations. At page thirteen (13), we're looking at adolescents with their cognitive limitations. And I think what you're saying here, Doctor, is that when an adolescent realizes that there's more than one opinion out there about anything, he's happy to make up his own mind and to do, as you write, to do his own thing. Isn't that what you're saying?

A- Yes, I'm suggesting that faced with what they see to be irreconcilable differences of opinion, they advocate responsibility for making these judgments on a cognitive basis, and instead -- of course, they do act, we're not free not to act in the world -- but they act on the basis of impulse, intuition, gut feelings, rather than

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on a consideration of the relevant evidence.

Q- You're saying that adolescents, once they see two (2) opinions out there, simply discard the facts altogether?

A- That's probably -- states it a little too harshly, but in principal, yes, I take it that's correct.

Q- And the strong opinions which adolescents might hold, that cigarette smoking is harmful to health, what would that be based on: their intuition?

A- Well, I've already indicated that children are aware that -- children and adolescents are aware that cigarette smoking is harmful to your health. The question becomes how do they use this knowledge in arriving at a reasoned course of action. So it's not my claim that the factual knowledge that's in their head is not derived in large part from the things about them, the people and other things in their environment. Obviously, they get this information somewhere. The issue is when they see that this -- the available knowledge claims conflict, how do they choose to behave or on what basis do they find a way of proceeding or making choices.

So, no, it's not my claim that children invent knowledge. They certainly acquire knowledge from their environment.

Q- Well, Doctor, my question is: do the adolescents --

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because here we're talking about adolescents now -- do the adolescents, having this knowledge and having, in fact, the opinion as you acknowledge, that cigarette smoking is harmful, do they simply discard that in making their choice about their own behaviour?

A- Well, it would appear that many of them do, yes.

Q- Well, do you say that simply because they decide to smoke?

A- I'm not sure I understand.

Q- Well, why do you say it appears that they do?

A- Well, it appears that ninety-eight percent (98%) of them know that it's harmful to your health, and some percentage of them -- I've read a great number of different figures, but call it thirty percent (30%), go ahead and smoke. So, yes, they hold the opinion that smoking is dangerous to your health, yes, many of them go ahead and smoke in any case, and yes, that's inconsistent.

Q- But you just ...

A- But...

Q- Sorry. Go ahead.

A- But inconsistency is a feature of adolescents.

Q- Well, isn't inconsistency a feature of human life? Don't adults do the same thing? Don't you do the same thing, Doctor?

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A- Well, it's not my purpose to characterize adolescents as though they're members of some different species. Yes, there are many way in which they're not only like the younger children that they once were and they're also, of course, like the adults they will become.

So I could list a great number of ways in which adolescents are like adults or are like children, but I have taken it to be my task to point out those ways in which adolescents are different from adults, both in their cognitive and social emotional development.

Q- What I'm trying to get at though, is that this particular problem that you're citing here, and what you've just mentioned, the fact of having knowledge and nevertheless choosing a behaviour which you would think that knowledge would dictate against, that is a feature of adolescent life as well as of adult life, is it not?

A- Yes. And I'm just suggesting it's a stronger feature of adolescent life.

Q- Now, what you describe there for adolescents, it would be the same for any product which you consider dangerous, wouldn't it? How about riding motorcycles?

A- Well, I'm not sure of your particular example but, in principle, I would agree with you that this has nothing to do with the concrete content of cigarette advertising. My claim is more general than that, my

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claim is that when they're confronted with competing knowledge claims they advocate the task of making a reasoned decision. And if there are competing knowledge claims about motorcycles -- I don't know about that -- then I think that that would also cause them problems, yes.

Q- But do you know that motorcycles are advertised?

A- Yes, of course I'm aware of that.

Q- Right. And would you consider those advertisements to constitute what you call competing knowledge?

A- Well, I've not seen a Health Canada warning about the riding of motorcycles. Perhaps there is one. I take it that there are people advertising motorcycles and I don't know who it is that speaks the other case. Maybe there is no one, maybe there are strong groups speaking in the case. I just don't know the answer to that.

Q- Well, would you take it that the presence of advertising of motorcycles is an input to adolescents that riding motorcycles is safe?

A- Yes, just as I would take it that the existence of cigarette advertising suggests to adolescents that society in one way or another condones and approves of cigarette smoking.

Q- And what about alcohol advertising. Does that do the same thing for them?

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A- Yes, I think it does.

Q- M'hm. Now, if we go to page eighteen (18), in the second paragraph on page eighteen (18), halfway down that paragraph you conclude, having looked at these cognitive problems in children and adolescents, that -- in the middle of it:

> "They can only be expected to profit from no longer being exposed to public communications et cetera, carefully constructed to lead them into courses of action."

First of all, do you have any idea yourself about how advertisements are constructed?

A- First, I'm not clear. Are you referring to this sentence or is it a separate question in itself?

Q- It's -- I've got several questions about this one (1) sentence.

A- Okay.

Q-

> "They can only be expected to profit from no longer being exposed to public communications carefully constructed to lead them into courses of action that do not serve their present or future interests."

A- Yes.

Q- My first question is, do you have any idea how commercial interests go about constructing their

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advertising?

A- Well, I did sit through some of the testimony of Dr. Pollay earlier, but I claim no expertise for myself...

Q- Okay.

A- ...about the construction of advertising.

Q- Okay. "And no longer being exposed" -- I want to get this clear from you, Doctor. Is it really your opinion that we are serving adolescents and children better by making sure that they are not exposed to certain advertising?

A- Yes.

Q- Yes. Okay. And I take it, from what you've just said, that you would not limit yourself to cigarette advertising?

A- No, I think that you shouldn't take that from what I said.

Q- Well, I thought you said that alcohol advertising was also a suggestion to them that they could drink safely?

Me BAKER:

He didn't say that, Mr. Potter.

Me POTTER:

I beg -- then I misinterpreted the...

Me BAKER:

Then maybe you should have the record read back, that's not what he said.

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Me POTTER:

Q- Well, please explain to me why you -- why you limit that statement only to cigarette advertising?

A- Well, which statement am I limiting only to cigarette advertising?

Q- This one I've now read twice.

> "They can only be expected to profit from no longer being exposed to public communications carefully constructed to lead them into courses of action that do not serve their present or future interests."

Are you referring only to cigarette advertising?

A- Well, I'm -- I'm referring to cigarette advertising, in this case, yes.

Q- Well, does...

A- Where I say "no longer being exposed," I'm simply referring to the fact that there is an ad ban in place, so it's in that sense no longer being exposed to public communications.

Q- Yes.

A- That's what I had in mind, yes.

Q- So we understood that. In other words, what you had in mind there was cigarette advertising?

A- Yes.

Q- And my question to you is do you have in mind any other

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advertising or is it only cigarette advertising which leads children and adolescents the wrong way?

A- Well, at the moment, I mean this to apply only to cigarette advertising.

Q- Well, Doctor, I'm asking you, you're a child psychologist. Is there -- is that the only advertising that leads children the wrong way?

A- Well, I'm sure toy advertising, for example, leads -- leads children the wrong way, but I'm not -- I'm not in the role of arguing for bans or trying to produce them, and I'm -- I understand the thrust of your question. You would -- you wonder if whether, because I argued that the elimination of cigarette advertising would reduce the likelihood that children smoke, whether I would take the same view about other products; and I think one has to be very careful here and there is a risk of what I would call a category mistake or a sort of a mixing of apples and oranges. I think if there were another product like cigarettes which the health officials of this country had explicitly named as a health hazard when used at all, if there was such a product, and I can't think of any other product that fits into that category, but if there were such a product, then I think that if it was known to be harmful to children and if the advertising was known to

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encourage them, yes, I would be against it.

Q- Well, I thought you said, in your testimony earlier, that there are many things which society tends to reserve to adults thinking that they're not meant for children?

A- I can't -- there are certainly products that can't be purchased by children.

Q- Well, that's right. So, would you be happy, then, if cigarettes simply could not be purchased by children?

Me BAKER:

My Lord, is the issue what makes Dr. Chandler happy? We're not talking about the purchasing of cigarettes for the moment. Is he driving to the issue of bias -- I don't know where he's going with the question but I don't think it's particularly relevant.

Me POTTER:

My Lord, I think it's very clear where I'm going.

THE COURT:

No, you don't have to answer. I think it's relevant to -- you're in cross-examination.

Me POTTER:

Thank you.

Q- You mentioned earlier alcohol and driving.

A- Well, let's take alcohol, for example, then.

Q- All right, let's take alcohol.

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Me BAKER:

What kind?

A- All. So is your question am I -- would I be in favour of a ban on alcohol advertising, is that your question?

Q- Well, and -- first of all, I'm just trying to find out whether you believe that we can help our children and adolescents by preventing them from being exposed to only cigarette advertising or whether other advertising fits in there? Your answer was cigarettes are special?

A- Yes, that's right.

Q- I reminded you of your statement today that there are several products or activities which we consider to be reserved to adults -- and the examples you gave were driving and alcohol. Drive -- both cars and gasoline and automobile trips and various kinds of alcohol are advertised, so do you think we would serve our adolescents and children better by getting rid of the advertising of such products?

A- Well, I have described cigarettes as a special case and I want to be clear why I say that. I think that, obviously, there are laws forbidding the purchase of alcohol by minors, just as there are laws forbidding the purchase of cigarettes by minors, but I believe that in our culture and in many cultures, parents judge alcohol to be used in moderation, used in a rational way, to be

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a food product, something that accompanies the way that people eat and live their lives, so while I am certainly, as a developmental psychologist, not an advocate of children drinking, I don't put alcohol in the same category as I put cigarettes which -- I don't think there are rational parents in this day and age that want to teach their children how to smoke in the same way that many -- very concerned and caring parents feel that it's quite appropriate to teach their children to drink sensibly and in moderation.

So, I think it's quite consistent, at least I experience it as consistent, to argue that cigarettes, which my government has announced are harmful to all and in any quantity, that advertising for those harmful products should be banned or, at least, if there exists such a ban, then I personally find that consistent with my own views.

If you ask me am I interested in seeing alcohol banned because alcohol is sometimes misused, then my answer is that I think that we should discourage children from drinking but I don't see that it is a product in the same class or category as are cigarettes.

Q- So I take it then, if we boil it down, though you believe children and adolescents should be discouraged from drinking, you don't believe that we need -- that we

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serve them better by banning the advertising of alcohol?

A- I don't believe -- I just -- I thought I was clearer than that. I said that I don't -- it's not my view that children should be forever and in every instance discouraged from drinking. I think there are many responsible parents, whose views I respect, who take it as their job to teach their children to use alcohol in a sensible and moderate way as a food item and it would not be my purpose to try to -- to intrude into that in any way. If I were asked should they discourage their children from drinking excessively or misusing alcohol, then I think, of course, the answer to that is very obvious.

Q- Well, I'll ask you once again, do you think that children or adolescents are better served or not by banning the advertising of alcohol?

A- Well, I think society is obliged to make careful and weighted decisions here. It's my view that the evidence in support of the dangers of smoking cigarettes is so overwhelming that it is perfectly proper in my judgment, it's certainly -- I can only say this as a citizen, not as an expert in any way, but it feels perfectly proper to me for there to be such a ban in place. At the moment, I have no evidence that alcohol used thoughtfully and in moderation is a danger and I think

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it's appropriate that parents instruct their children in these matters, and so if someone were to demonstrate, as they have with cigarettes, that alcohol used in any quantity, no matter how moderately or thoughtfully, was dangerous to a child's health, then I would take the same view as I've taken with cigarettes.

So my view is not unique to cigarettes, it's unique to products that are known to be harmful to a person's health and -- in any quantity. And so I feel comfortable, in my own mind, at least, feeling, as I've expressed in this sentence, that it can only be a good thing that this ban is in place, without essentially committing myself to a course of action, a slippery slope argument, if you will, that leads to the banning of all kinds of products that might in some usage or misusage be dangerous.

Q- So for alcohol, to take an example, you're happy to leave it to the parents?

A- Yes, I'm happy, personally, to leave it to the parents.

Q- And to leave advertising, even though twelve (12) year olds will see advertising?

A- Yes.

Q- Now, if we go to page fourteen (14), this is the paragraph in which you're talking about problems and identity formation. Now, I take it these problems here

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and the modelling and the use of images in mass media, you're not talking here only about the images in cigarette advertising, are you? Adolescents will use the images where they can find them, won't they?

A- I think I've said exactly that, yes.

Q- Right. In fact, they look everywhere for these images?

A- Yes, I think they do.

Q- Right. In fact, I think you said that it was their job, it was their -- that's their job as an adolescent, to look around for images on which to model themselves?

A- Yes, I think that's true.

Q- And when we look at those cultural icons which you've mentioned in the middle of the paragraph, I take it there's no way to stop adolescents from modelling themselves on movie stars?

A- No way that I'd be very happy with, no.

Q- No. Or rock idols for that matter?

A- No.

Q- No.

A- Although there certainly are restrictions placed on these things. I guess that's what ratings in movies are all about.

THE COURT:

What?

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Me POTTER:

Ratings of movies, My Lord.

A- Ratings of the code to guide parents on which movies children should see.

THE COURT:

Oh. Yes, they usually go to the R films instead of...

A- Some of these things backfire, I understand.

Q- It's very helpful to them.

Me POTTER:

Q- Now, are you aware of any cultural icons which are used in Canadian advertising of cigarettes?

A- I have to confess that I'm not very expert on Canadian advertising of cigarettes, so my knowledge of what is in these advertisements is very thin indeed.

Q- Okay. In fact, one thing I noticed in your testimony, Doctor, was that you referred to no specific advertising, no specific advertising campaign. Can I take it that you have not looked at particular campaigns? No particular ad campaigns have been shown to you?

A- Well, certainly I've not seen the full development of any ad campaign, no. I've certainly, as a citizen walking the streets, I see lots of evidence of these ad campaigns.

Q- M'hm.

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A- But to -- I certainly can't lay the claim that I know the full range and depth of the lifestyle advertising and other advertising tricks that are used. No, I don't know that.

Q- Okay. So I take it that you cannot say to us whether there are any cultural icons at all in Canadian advertising of tobacco products?

A- Well, I -- well, first, the thrust of your question, I agree that my knowledge of this is very thin, although it's my understanding that certain Canadian companies do engage in the sponsorship of sporting activities. I'm not sure that I can name the brand and the sport in every case.

Q- Is that what you would call a cultural icon, Doctor?

A- Well, certainly things like tennis and tennis stars and race car drivers, these are among the things that adolescents hold up as images that they would like to approximate, I think.

Q- Okay, now, will you please tell me whether in any advertising of Canadian tobacco products, you know that they include what you call cultural icons?

A- No, I've just explained that I have no broad knowledge of the content of the Canadian cigarette advertising market.

Q- Okay. So that when you say on the following page,

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halfway down the page, the last sentence before...

THE COURT:

When you say following page, you mean fifteen (15)?

Me POTTER:

Page fifteen (15). Thank you, My Lord.

Q- The last sentence before heading three point four point two (3.4.2), that:

"As such icons fade from memory, adolescents likely will be forced to search out some new and hopefully less damaging mark of group identity."

You were talking about the icons that -- the same cultural icons, are we?

A- Well, we're talking about all of those things that are associated with the leading of an attractive lifestyle. Your emphasis on the word "icons" points out, I think, very nicely that the word icon better fits something like a rock -- an individual rock star, but my point here is to suggest that the imagery in general and in here, even though I have no expertise, I see lots of cigarette advertisements showing people engaged in windsurfing and other kinds of sporting activities that are -- or outdoor activities, that are very attractive and interesting to young people.

And so, yes, as those images faded from memory and

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the whole connection that has been, I think, built up in children's minds that cigarettes go with these attractive lifestyles, as that knowledge fades, then I think we can anticipate that the -- that at least some children who would otherwise smoke will be less likely to do so.

Q- M'hm. So, in fact, you make the same kind of reference at page ten (10), at the bottom of page ten (10) of your report, and this is in relation to children ...

A- M'hm.

Q- ...and in relation to the construction of stereotypes.

A- M'hm.

Q- I take it that also is a reference to the kinds of people that you remember seeing in ads: the rugged man, the sophisticated woman, et cetera.

A- Yes. Although here, and elsewhere, I have no specific brand always or even necessarily in mind. I'm just aware, as I think everyone's aware, that sophisticated attractive people doing sophisticated attractive things are often shown in ads, and I think that this contributes to the stereotype that children have that smoking is a necessary or commonly associated part of what it means to be grown up, sophisticated and mature.

Q- Doctor, have you ever seen a cigarette ad with no people in it?

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A- I'm trying to recall. Perhaps. None leaps to mind.

Q- M'hm. I take it -- well, let's go at it another way.

An ad with no people in it or no particular activity portrayed, I take it would cause less of a problem for you on the question of creation of stereotypes or the icons of which you were speaking before?

A- As long as we're careful to distinguish between less problem and no problem, yes, it would create less of a problem.

Q- Less of a problem. And an ad with just purely words in it, would that be just less of a problem or no problem?

A- It would just be less of a problem.

Q- Just less.

A- I think there's several things that would make an advertisement for cigarettes made up of pictures of cigarette packages and words or just words, still that -- the presence of that ad would do several things, I think. One is that it creates for children the conviction that at least some important parts of their society approve of such matters. It creates the conflict for them that some adults speak against such matters, some speak for them. So, yes, that would cause me problems. Although, I grant you, I would be less troubled, but I would still be persistently troubled by

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the presence of such ads.

Q- Okay. Let's go back to your page fourteen (14), then, and in the bottom half of that paragraph in which you say: "well, sometimes the experimentation turns out to be rather benign." Are you with me, Doctor?

A- I now am, yes.

Q- I'm right after your cultural icons there...

A- M'hm.

Q- ...the Virginia Slims Woman.

"While sometimes this experimentation turns out to be rather benign, some of the images provided by the mass media and lifestyle advertising, do young persons a serious disservice by conveying a highly distorted image of the social world..."

Now -- oh:

"...and installing attitudes of thought and behavioral patterns that are often hard or impossible to break."

A- M'hm.

Q- Now, I take it here, again, we're talking about mass media and lifestyle advertising generally, aren't we?

A- Well, this particular paragraph, as is the whole of the report, is really directed toward the subject matter of my reason for being in this courtroom, which is

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cigarette advertising.

Q- Well, are you trying to say that it's only cigarette advertising which uses images which convey a distorted image of the social world?

A- No, I've already referred to the fact that toy advertising sometimes distorts -- presents distorted images to children, for example.

Q- Yes. So lots of advertising can do what you're saying here, that is to say, convey a distorted image of the social world; isn't that correct?

A- Yes, I think that's so.

Q- Yes. And all of that advertising, which conveys a distorted image of the social world, would fit into that sentence here.

A- I'm not sure I understand what you mean?

Q- Well, that it does a serious disservice to young people?

A- No, I don't think all of it would be considered to do a serious disservice. I think with reference to my examples of toys for example, I think that toy advertisements often distort and present a distorted image, and I suspect some important disservice is done to children, but I think we're, again, on a scale of seriousness of consequences, so while I think toy advertising distorts images of the merits of toys, that

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it doesn't follow from that that anyone is anxious to ban toy ads or to suggest that toys are harmful to children.

Q- Okay. Well, what are the images that you're talking about there, Doctor?

A- Well, I'm addressing in particular the images that reference the subject matter of this trial, which are cigarette advertising.

Q- Well, that's -- when -- are you saying that when you used the words in there: some of the images provided by the mass media and lifestyle advertising, that when you wrote that, you had in mind only the images in cigarette advertising?

A- That's certainly what I intended to write about, yes.

Q- Well, can you name me one (1)?

A- Name you one (1) of...

Q- Well, what images are you talking about?

A- Well, I have in mind the images of the advertising media, the sponsorships of products, these kinds of things.

THE COURT:

Yes, but what image? You cited the Marlboro man, the Virginia Slim woman?

A- Yes.

Q- Are there any other?

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A- Well, those are ones that I do know about. My knowledge of what's in all the ads certainly isn't complete, but those would do for a start.

Q- Marlboro, that's an American cigarette, isn't it?

A- I think that it is. But I'm certainly not competent to testify what the full range of advertising is of exclusively Canadian cigarettes, but I believe that I would be on safe ground to suggest -- or to say that I believe that they include lifestyle advertising that associates cigarette products with -- with people in attractive settings and doing attractive things or acting in sophisticated ways, and that it doesn't include a balanced picture of what it means to use cigarette products.

Me POTTER:

Q- Well, I want to be fair to you here, Doctor, I want to get at what you meant by images when you wrote that and I -- I'm looking at the next sentence which begins:

"Particularly unfair are those messages that help to steer..."

-- et cetera, et cetera.

A- M'hm.

Q- It seems to me you had a rather large topic in mind when you wrote about images provided by the mass media and lifestyle advertising?

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A- No, I think I've just made clear that the whole thrust of this paragraph was intended to be about cigarette advertising.

Q- And which movie star do you think advertises cigarettes?

A- Well, we talked earlier about Paul Hogan and his advertising of cigarettes.

Q- Of course that was before he was a movie star?

A- Well, I don't know so much about Paul Hogan's career.

Q- Yes, right. And which rock idol do you think advertises cigarettes?

A- Have I said rock idol that advertises cigarettes?

Q- Doctor, I'm asking you these questions because I -- I want to be clear with you and -- and fair with you, though I may sound a bit abrupt, but it seems clear to me that you used that word images to refer to a vast array of images which can appear in the mast media, not just cigarette images?

A- No, I understand that that's the point that you're driving to and I also understand equally well that I had in mind a variety of images, but the topic of this paragraph is children's -- the focus of my concern and, as I thought was proper, the direction of my report was, as much as possible, to direct my comments to children's responses to cigarette advertising.

Q- Okay, will you agree with me, then, that as I think you

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already have, that there are images provided by the mass media and lifestyle advertising other than cigarette advertising which provide a distorted image of the social world?

A- Yes, of course that's true, but my point here is if -- if -- the balance of the sentence suggests that it's particularly unfair whenever these are products which once taken up are behaviorally very hard to set down.

Q- That's correct. You do say that, Doctor, but what you say in the sentence that I'm looking at is that the images of which I am speaking do young persons a serious disservice by conveying a highly distorted image of the social world?

A- And my only point was to urge you that the paragraph makes more sense if you don't just read the one (1) sentence several times but also read the sentence that follows, and that was my only point.

Q- Yes. And are you saying to me that the images in advertising of products other than cigarettes which do offer a distorted image of the social world, do not do a serious disservice to adolescents?

A- Well, let me try to be clear. I take it that it's the purpose of advertising to get people to buy the product that's being advertized and I take it that it's wise of the advertiser to try to put whatever product that is in

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the best possible light, and so the intention of advertising, as I understand it as a layman, is to get people to buy or use this product. My point, as a child psychologist, is to stress the fact that that enterprise, which may come up on the blind side of adults on occasion or catch them unawares, perhaps leads them into things that, on more balanced reflection, they would not do -- and I take it that's simply the way the world is and I have no special quarrel with it.

My concern is for young persons who lack the cognitive and social emotional maturity to be -- to play in this arena of salesmanship and -- and here I take it that because children are cognitively limited, because they're drawn to adult products and are trying to achieve these lifestyles that are shown, that for all those reasons, children are taken advantage of and they are vulnerable and so I'm quite content to say that it's important for we, as adults, to step in and be concerned for their welfare -- and I say that particularly as I mentioned in the last sentence of that paragraph, whenever it's the case, that these products that they are led to toy with, or make use of, have the feature that having once used them or begun to use them, it's a very hard behavioral pattern to reverse.

Q- Okay, Doctor, we are all concerned about protecting our

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young children and doing them a service rather than a disservice, okay.

I take it from what you've just said, that the distorted images offered by lifestyle advertising of products other than cigarettes, you're happy to leave them out there because they do not create, as you call them, dependencies; is that right?

A- Well, I haven't used, I think...

Q- Yes, you use dependencies.

A- Yes, I do use the word dependency. Yes, I want to be clear that I think that there is a gradation here that runs from something, I don't know what particularly benign product I have in mind, all the way to cigarettes. And here I think that they're particularly unfair, both for the reason that they're, at least as far as the government is concerned, unarguably bad for your health, and because, again, as I think is widely known, that the habit of smoking them is an unusually difficult habit to set down.

Q- Doctor, I'm going to explore that a bit more with you tomorrow, but before we break today, I'd like to ask you some general questions about some of the articles you've put in.

You remember that there were several objections made to some of the articles because they did not appear

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in your report.

A- Yes, I do remember that.

Q- Can you tell me whether those articles you considered before writing your report?

A- Let me describe that in the interim, almost nine (9) months, I guess, since I wrote my report, I have understood it as part of my task before a period in this Court, to continue to familiarize myself with this literature, and so it is the case that some of the articles to which you refer, that is those which I cited earlier in the day, but which did not appear in the body of my report, are in fact articles that I have become familiar with in the last nine (9) months, yes.

Q- In the last nine (9) months. And can we narrow it down a bit? Is it nine (9) months or is it one (1) month?

A- No, I think if you tried to narrow it, you'd fall into error.

Q- Into where?

A- Into error. I mean it would be a mistake to try to narrow it. Some of these articles I read eight (8) months ago, some seven (7) months ago. So I've made it my business in off hours since I knew that I would be asked to appear in this Court to try to acquaint myself broadly with this literature.

Q- Right. So let's say that these articles, the ones which

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have been admitted under reserve of an objection, you had not read before writing your report?

A- I just want to see if...

THE COURT:

Well, maybe he doesn't know what is objected -- or maybe he does -- maybe he doesn't know which ones were objected to.

Me POTTER:

All the ones which are not mentioned in your report, Doctor.

Me BAKER:

Could you just review what those are? Well, let's go backwards. It's easier. AG-240. Chassin.

THE COURT:

Yes, 240, Chassin and Presson.

Me BAKER:

Okay.

THE COURT:

Self-images and Cigarette Smoking in Adolescence.

A- Yes, that's an article that I've become acquainted with since writing my report, okay.

Me POTTER:

Q- Right. AG-239 appears in your report.

Me BAKER:

Leventhal.

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A- It's Leventhal.

Me POTTER:

Q- Leventhal. AG-238 is Aitken, Leathar and Squair, Children's Awareness.

THE COURT:

Objected to also.

A- Yes.

Me POTTER:

Q- That one, I take it, you did not have before your report?

A- I am aware of Aitken's work before my report, but I can't say with absolute certainty which of the several Aitken articles I knew before and so I can't be absolutely clear here.

So the point that I want to leave you with is that Aitken is a name known to me for some time, whether these two (2) articles came into my awareness since the writing of the report, I can't speak.

THE COURT:

So your comment goes for 237 as well.

Me BAKER:

Yes, that's the earlier article -- the other...

THE COURT:

Children's Perception of Advertisements and Cigarettes -- for Cigarettes.

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Me POTTER:

Q- And what about AG-236, Brand Preference, by Simon Chapman?

A- I just misheard you, I'm sorry. Could you just repeat it?

Q- The Chapman article, Doctor?

A- The Chapman article. Here again, I'm not absolutely clear. One of the reasons I'm sorry to be less precise about this than you might hope, but some of the articles of which I was aware well before writing my report, reference some of the articles that I'm now drawing your attention to. So, as a consequence of that, I was aware of the existence and often the content or at least summaries of the contents of these articles by reading of them in other publications of which I was aware.

As you know, usually there is a kind of accumulation in the literature so that one reads an article, it references thirty (30) or forty (40) articles.

THE COURT:

So you're not sure if you had read it before.

A- Yes. So there's a little bit of uncertainty, but I'm -- so, for example, I think that the Gorn article, although I'm not sure, cites some of these articles.

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Me POTTER:

Q- That's AG-235?

A- Yes. Certainly it's the case with others that I've read, that they cite -- track backwards in time these other articles.

Q- But the Gorn article itself is not mentioned in your report. What about that one? Had you considered it?

A- Well, no -- yes. Yes, it is.

Me BAKER:

Oh, yes it is.

Me POTTER:

Q- It is, I'm sorry.

Me BAKER:

It certainly is, Mr. Potter.

Me POTTER:

Excuse me. That's my mistake.

Q- AG-234, which is Children's Use of Cognitive Defenses, the Brucks article.

A- M'hm.

Q- Now, how about that one? Had you considered that one before writing your report?

A- I was aware of this one before writing my report.

Q- Well, you were aware of it.

A- Yes.

Q- You'd read it?

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A- Well, I had read reference to it at least. I knew the content of it.

Q- And that meant -- the fellow we mentioned awhile ago, the author of AG-236, Simon Chapman, is he a child psychologist?

A- I don't know the profession of Chapman.

Q- You don't know his profession?

A- No, I don't.

Q- You don't know his training?

A- No, I don't.

Q- You don't know what he does now?

A- No, I don't know that either.

Q- No.

A- I simply know he's a figure that's cited frequently in the literature. I think almost every article that I've read since the publication of his nineteen eighty (1980) and nineteen eighty-two (1982) work bothered to cite him. Certainly Leventhal cites him as do many others.

Q- Right. You don't know his training?

A- No, I don't know his discipline.

Q- You don't know his discipline. And...

THE COURT:

Okay.

Me POTTER:

Excuse me, My Lord, one more question.

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Until writing this report and until coming to this trial, had you looked at Chapman's works before, before being engaged for this trial?

A- The actual Chapman article, no.

Q- Had you read any of his work before?

A- No.

Q- No. Thank you, My Lord. I'm not finished, just finished for today.

THE COURT:

Thank you gentlemen, and we'll see you tomorrow -- and ladies -- and we'll see you tomorrow at ten (10H00).

ADJOURNMENT

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